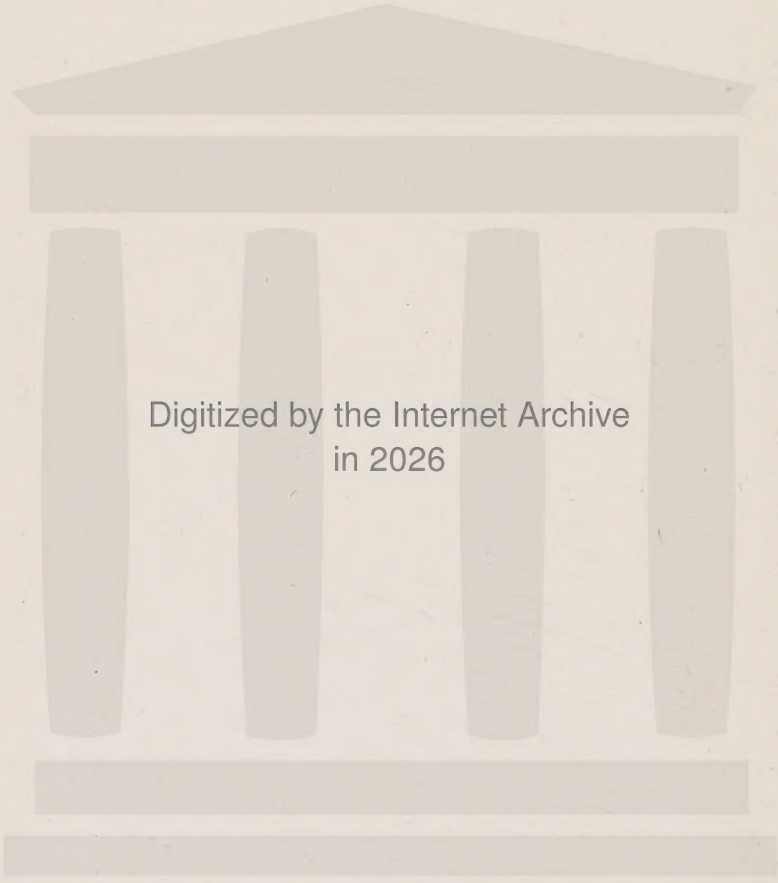
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TOWNSHIP OFFICERS' GUIDE

1918

COMPILED UNDER THE SUPERVISION OF
DENNIS E. ALWARD, Secretary of the Senate
CHARLES S. PIERCE, Clerk of the House of Representatives

BY AUTHORITY

FORT WAYNE PRINTING COMPANY
CONTRACTORS FOR MICHIGAN STATE PRINTING AND BINDING
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1918

NOTES OF EXPLANATION.

The character "§" is used in references to the Compiled Laws of 1915.

Unless otherwise stated, references are to the consecutive sections of this guide. The sections are numbered consecutively throughout the work and appear in bold-faced figures.

In many sections of this compilation, the law is not given verbatim, merely a digest being used, but in all cases, reference is given to the original section of the Compiled Laws of 1915 or of the Act of 1917.

Blank forms for the use of officers, follow the text, and are numbered consecutively. Numerous forms, used by various officers, which might seem essential to be printed herein, are omitted, as they are constantly in print and many of these are distributed to the officers who have occasion to use them.

The character "/" is used in citing decisions from the Michigan Reports, to avoid the repetition of the word "Mich."

AUTHORITY FOR COMPILATION.

[Act 367 of 1917, Sec. 2.]

The secretary of the senate and the clerk of the house of representatives shall, during the interim of the regular sessions of the legislature of nineteen hundred seventeen and nineteen hundred nineteen, prepare and publish, in book form, all existing laws of this state concerning the powers and duties of township officers, with suitable forms to be a guide for such township officers in the performance of their duties, and to be known as the Township Officers' Guide. The style of printing and binding of the Township Officers' Guide shall be similar to that of the Public Acts as published at the present time. The books shall be branded and distributed as were the copies of the last edition of the Township Officers' Guide.

[Act 139 of 1915, Sec. 2.]

There shall be published of the volume entitled "Township Officers' Guide," a sufficient number of copies to supply one copy each to the following officers, viz.: The several supervisors, township clerks, township treasurers, commissioners of highways, and each justice of the peace in the several townships in the State, and in addition to the foregoing there shall be published of said Township Officers' Guide, five hundred copies which shall be deposited in the office of the Secretary of State for sale and future distribution.

[Act 139 of 1915, Sec. 3.]

It shall be the duty of the said Secretary of State to cause to be delivered to the clerk of each county a sufficient number of copies of said work to supply each of the aforesaid township officers in his county, and it shall be the duty of said clerks respectively to cause a sufficient number of copies thereof to be delivered to the clerk of each township in his county, who shall deliver a copy thereof to each of the aforesaid officers in his township, taking their receipts therefor in the same manner as for other books.

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PART I.

TOWNSHIPS.

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CHAPTER I.

CHARACTER, POWERS AND IMMUNITIES OF TOWNSHIPS.

1. Township a Body Corporate, with Prescribed Powers.—Each organized township is a body corporate, with such powers and immunities as are prescribed by law. All suits and proceedings by or against a township are brought in the name thereof. Const. VIII, 16.

2. Legislature May Confer Powers.—The legislature may by general law confer upon organized townships such powers of a local, legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper. Const. VIII, 17.

LEGISLATIVE CONTROL: The legislature, in its discretion, may determine what legislative and administrative powers a municipality shall have.—Elliott v. Detroit, 121 / 615.

3. Permanency of Township Boundaries.—The limits and boundary lines of every organized township shall remain as now established, until otherwise provided by law. § 2046.

4. Penalty for Injuring Boundary Monuments.—Every person who shall wilfully or maliciously break down, injure, remove, or destroy any monument erected for the purpose of designating the boundaries of any township, * * * shall be punished by imprisonment in the county jail not more than three months, or by fine not exceeding fifty dollars, or both fine and imprisonment in the discretion of the court. § 15331.

5. General Powers of Townships.—The inhabitants of each organized township constitute a body corporate, and as such may sue and be sued, and may appoint all necessary agents and attorneys in that behalf; and have power to purchase and hold real and personal estate for the public use of the inhabitants, and to convey, alienate and dispose of the same; and to make all contracts that may be necessary and convenient for the exercise of their corporate powers, and any orders for the disposal of their corporate property which they may judge expedient. § 2047.

ORGANIZED TOWNSHIP: Each township is a separate municipality whose officers are elected by the residents from among themselves. No one not living in the township has any voice in its affairs.—Drain Com'r v. Baxter, 57 / 127.

A township organization acted on for years and recognized as valid will not be disturbed for defects in the original organization.—People v. Maynard, 15 / 463.

The legality of municipal organization can be tested only in direct proceedings for that purpose.—Clement v. Everest, 29 / 22.

Townships can exercise only such powers as are conferred by law, or are necessary for the performance of their corporate duties and the accomplishment of the purposes of their organization.—Att'y Gen. v. Burrell, 31 / 25.

PUBLIC PARKS: Township may hold lands for public parks, which are no more foreign to township purposes than to city or village purposes.—Att'y Gen. v. Burrell, 31 / 25.

6. **Conveyance of Lands to Township.**—Every conveyance of lands within the limits of a township, made in any manner, for the use or benefit of its inhabitants, has the same effect as if made to the township by name. § 2053.

7. **Township Clerk Liable to Township for Neglect to Make Reports.**—If any township clerk shall neglect or refuse to make out and transmit the annual report containing the reports of the several school districts of his township or any other report which the law may require of him, within the time limited therefor, he shall be liable to pay the full amount lost by the township or any district or districts by such neglect or refusal, with interest thereon, to be recovered in an action of debt or on the case. § 5755.

8. **County Clerk and School Commissioner Liable to Township for Neglect of Certain Duties.**—Any county clerk or county commissioner of schools who shall neglect or refuse to transmit to the superintendent of public instruction the reports required by this act or any other reports which the law may require, within the time limited therefor, shall be liable to pay to each township the full amount which such township or any school district therein shall lose by such neglect or refusal, with interest thereon to be recovered in an action of debt or on the case. § 5756.

9. **Township May Borrow Money and Issue Bonds for Improvement of Highways.**—For provisions of law relative thereto see sections 779 to 788 of this Guide.

10. **Township Entitled to Theatre License Fees.**—The township is entitled to the license fees from theatrical exhibitions, public shows, etc. See Sec. 727 of this Guide.

11. **Township May Maintain Pounds.**—Each township may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats, and neat cattle may be restrained and kept from going at large contrary to law, or to any by-law of such township. § 2229.

12. **Penalty for Injuring Pound.**—If any person shall willfully injure any pound maintained by any township, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding ninety days, at the discretion of the court. § 2230.

13. **Rural Agricultural Schools.**—Provisions for the establishment of rural agricultural schools by consolidating three or more rural schools in any township or school district; for the organization of school districts in certain cases; for teaching agriculture, manual training and home economics therein, and for providing state aid for the maintenance thereof, are made in Act 226 of 1917, which see.

14. When Township May Sue for Value of Assistance Given Poor Person.—If any person shall receive aid or assistance from any county, township, city or village in this state as a poor or indigent person, and shall thereafter be found to have been the owner of property, either real or personal, at the time such aid was received, the superintendents of the poor of the county or the proper official of any township, village or city by which such aid or assistance has been extended may bring suit at law in any court of competent jurisdiction to cover the value or amount of such aid or assistance, together with interest. On the death of any such poor or indigent person the superintendents of the poor of the county or the proper official of any township, village or city by which aid has been thus extended, may petition the probate court having jurisdiction in the premises for the administration of the estate, if any, of such poor or indigent person; and the kind or value of assistance rendered such person shall be a valid claim against his estate: Provided, That no claim arising by virtue of the provisions of this section shall be barred by any statute limiting the time within which action may be brought to recover on any claim, account or cost of action. Act 20 of 1917, Sec. 1.

15. Township Bonds Exempt from Taxation.—All bonds hereafter issued by any county, township, or school district within the State pursuant to statute, are hereby exempted from all taxation. § 4194.

CHAPTER II.

ORGANIZATION OF NEW TOWNSHIPS AND VACATING, DIVIDING OR ALTERING IN ITS BOUNDS, ANY TOWNSHIP.

16. Board of Supervisors May Organize.—The board of supervisors of each organized county may organize and consolidate townships under such restrictions and limitations as shall be prescribed by law. Const., VIII, 15.

17. Application for Organization or Division.—The board of supervisors in each of the several counties of this State shall have power within their respective counties and all territory attached thereto, by a vote of three-fifths of all the members elected to said board, to vacate, divide or alter in its bounds any township, whether the boundaries of such township may have been fixed theretofore by a special act of the legislature or by action of the board of supervisors, or erect a new township, or organize or consolidate townships, upon application to the board as hereinafter provided, of at least twelve freeholders of each of the townships to be affected by the division; except that in any township where there were not to exceed thirty electors at the last general election, then such application may be made by not less than five electors of such township voting at the last general election therein, and upon being furnished with a map of all the townships to be affected by the division, showing the proposed alterations: Provided, however, That where a township consists in part of a fractional township, in such case, the board may, upon application of three-fifths of the freeholders of the fractional portion of such township and the filing of a map, as herein provided, organize or erect the fractional portion thereof into a new township. And if the application shall be granted, a copy of said map with a certified statement of the action of said board thereunto annexed shall be filed in the office of the

clerk of said county; and a certified statement of the action of said board shall also be filed in the office of the Secretary of State; and it shall be the duty of the Secretary of State to cause the same to be published with the laws of the next Legislature, after the filing thereof, in the same manner as other laws are published. § 2277, C. L. of 1915, as Am. by Act 312 of 1917. [See Form No. 1.]

POWER GRANTED: Although a board of supervisors has the constitutional power (VIII 15) of organizing townships, yet it must do so under legislative restriction. Such restrictions are contained in this and the next section.—Atty. Gen. v. Marr, 55 / 445.

Prior to 1911 boards of supervisors had power to change the boundaries of townships only which have been fixed by the board, but under § 2277 as now amended, a wider jurisdiction was conferred. They now have the power to change the boundaries of any township whether the same may have been fixed by special act of the legislature or by action of the board.—Bailey v. Suprs., 184 / 266.

DIVISION OF TOWNSHIP: In dividing one township into two, a petition is required to be signed by twelve freeholders of the township which is affected, but it is not essential that the petition to form such new township should be signed by twelve freeholders from each of the divisions or from the part remaining after separation of a new division.—Bailey v. Suprs., 184 / 266.

MAP: The map is not required to show the topography, an exact delineation of the surface and several places in the townships, but only the boundaries and sections, or parts thereof contained in each, together with the place and course of any natural boundaries constituting the proposed changed limits to the townships.—Pelton v. Suprs., 52 / 517, 522.

18. Notice of Application, Posting, Etc.—Notice in writing of such intended application, subscribed by not less than twelve of the freeholders or by not less than five electors, as the case may be, of the township or townships to be affected, shall be posted in five of the most public places in each of the townships to be affected thereby, four weeks next previous to such application to the board of supervisors: Provided, however, That where a township consists in part of a fractional township, in such case said notice of such application, subscribed by not less than three-fifths of the freeholders of the fractional portion of said township, shall be posted in five of the most public places of said fractional township four weeks previous to such application to the board of supervisors; and a copy of such notice shall also be published once in each week four successive weeks immediately preceding the meeting of the board of supervisors at which such application is to be made, in some newspaper printed in the county, if any shall be published therein. § 2278. As Am. by Act 312 of 1917. [See Forms Nos. 2 and 3.]

PROOF OF POSTING: The proof of posting must show when and where the notice was posted. Scrafford v. Suprs., 41 / 647.

NOTICE: The notice posted and the signatures thereto may be printed.—Pelton v. Suprs., 52 / 517, 521.

FREEHOLDERS: The following persons are considered freeholders: The owners of an estate of inheritance or for life (§ 11523); the holder of an estate for the life of a third person, during the life of the grantee or devisee (§ 11524); qualified electors, being homesteaders or settlers and actual occupants of state, school, swamp or other public lands, for purposes of township organization or any action relating to highways (§ 714).

19. Board Shall Provide for Holding First Meeting.—Whenever the board of supervisors erect a new township, they must designate the name thereof, the time and place of holding the first annual township meeting therein, and three electors of such township, whose duty it shall be to preside at such meeting, appoint a clerk, open and keep the polls, and exercise the same powers as the inspectors of election at any township meeting. In case any of the three electors refuse or neglect to serve, the electors of the township present at such meeting have power to substitute some other elector of such township for each one so neglecting or refusing to serve. § 2279.

20. Notice of First Meeting.—Notice of the time and place of such meeting, signed by the chairman or clerk of the board of supervisors,

must be posted in four of the most public places in the new township, by the persons designated to preside at the meeting, or by some person appointed by the board of supervisors for that purpose, and in each of the townships whose boundaries may have been altered by the erection of the new township, at least fourteen days before holding the same. The board must also fix the place for holding the first township meetings in the town or towns from which such new township is taken, which must also be stated in the notice posted in such last named township. § 2279.

21. **Terms of Office of Incumbents and New Officers.**—Nothing in this act affects the rights, or abridges or enlarges the term of office of any town officer, except justice of the peace, in any such township; but each township officer, other than justice, residing within the limits of the new township, continues to be such officer, in the new township, till the expiration of the time for which he was elected, in the same manner as if originally elected therein; and the terms of office of all township officers except justices of the peace, elected at such first township meeting, expire on the first Monday of April thereafter, or as soon thereafter as their successors are elected and qualified. § 2279.

22. **First Town Meeting Shall be Held in April.**—The first township meeting after the organization of any township shall be held on the first Monday in April after its organization, and at such meeting there shall be an election for such officers as are by law to be elected at township meetings. § 2069. See also Sec. 20 of this Guide.

23. **Manner of Conducting First Town Meeting.**—At the first township meeting in any township, the qualified electors present, between the hours of nine and ten o'clock in the forenoon, shall choose one of their number as moderator, one of their number as clerk, and two others of their number as inspectors, who shall severally take the oath of office prescribed by the constitution, and shall conduct the proceedings of such meeting in all respects as other township meetings are required by law to be conducted, as near as may be, and with the same powers. § 2270.

24. **Proceedings in Case of Failure to Hold First Meeting.**—If the inhabitants of any newly organized township shall fail to hold their first township meeting on the day specified by law, any three qualified voters of such township may call a meeting of the electors of such township for such township election at any time thereafter, by posting up notices thereof in not less than three public places in such township, at lease ten days previous to the holding of such meeting. § 2071. [See form No. 4.]

25. **Administering Oaths to Inspectors.**—At such first township meeting the moderator shall administer the oath of office to the other inspectors and either of the other inspectors, after having been so qualified, may administer the like oath to the moderator. § 2072.

26. **Justice Residing in New Township Vacates Office.**—When a new township shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed to have vacated their respective offices. § 2098.

27. **Classification of Justices.**—At the first election in any township justices shall be classified as shall be prescribed by law. Const. VII. 15.

28. **Time and Manner of Classifying Justices.**—Within six days after the election of justices of the peace in a new township, the supervisor

shall give notice in writing to the justices elected, and to the township clerk, of the time and place when and where he will meet them, to determine by lot the classes of such justices; which notice shall be served at least six, and not more than twelve days, previous to the time appointed therein for such meeting. At the time and place so appointed, the supervisor and township clerk shall cause to be written on separate pieces of paper, as near alike as may be, the numbers one, two, three, four, or such and so many of such numbers as shall correspond with the number elected, and shall cause them to be rolled up as nearly alike as may be, and deposited in a box; and the persons elected justices shall severally draw one of the said pieces of paper, and each shall be classed according to the number written on the paper so drawn by him, and shall hold his office for the term as follows: The term of number one shall expire on the fourth day of July then next following, and the terms of the others on the fourth day of July in each succeeding year, respectively, according to the numbers drawn by them. If any person elected a justice shall neglect to attend such drawing, the supervisor shall draw for him; but if the supervisor be absent from his township, or unable to serve, or his office be vacant, the township clerk shall give the notice and perform the duties herein enjoined on such supervisor. § § 2099-2101. [See form No. 5.]

29. Certificates of Classification to be Made and Recorded.—Duplicate certificates of such drawing, and of the result thereof, shall be made and certified by the supervisor and township clerk, or such one of them as shall attend the same, one of which shall be filed with the township clerk and the other with the county clerk, and shall be recorded by said clerks in the books in which the canvass of votes shall have been recorded, and shall be conclusive evidence of the classes to which the justices so elected belong. § 2102. [See form No. 6.]

CHAPTER III.

SUITS AND ACTIONS BY AND AGAINST TOWNSHIPS.

30. Constitutional Provision.—All suits and proceedings by or against a township shall be in the name thereof. Const. VIII, 16.

31. Suits Must be in Name of Township.—All suits, acts, or proceedings, by or against a township, in its corporate capacity, must be in the name of such township. § § 2053-2056. See also Secs. 34 and 35 of this Guide.

SUITS BY AND AGAINST: Mandamus is the proper remedy to enforce payment of a liquidated demand against a township.—People v. LaGrange Twp. Bd., 2 / 187; People v. Wayne Auditors, 5 / 223; Marathon v. Oregon, 8 / 372; People v. Porter and Calvin Twps., 18 / 101; Dayton v. Rounds, 27 / 82; McArthur v. Duncan Twp., 34 / 27; Detroit v. Mich. Pav. Co., 36 / 335; Just v. Wise Twp., 42 / 573.

As to liability of townships and their responsibility for the acts and neglect of officers, see Det. v. Blackeby, 21 / 84, 106.

A township cannot be sued in any other county than that of which it forms a part.—Pack, Woods & Co. v. Greenbush Township, 62 / 122. A township may defend and indemnify its officers in bona fide attempts to discharge their duty, when such duty is one imposed by law and when the matter is one in which the township has an interest.—Jenney v. Mussey Twp., 121 / 231. A township may apply to a court of equity in a proper case.—Merritt Twp. v. Hart, 131 / 177.

32. Supervisor Agent for Township.—The supervisor of each township is the agent for his township, for the transaction of all legal business, by whom suits may be brought and defended. § 2115.

33. Service May be on Supervisor or Clerk.—In suits or proceedings against townships, service may be made upon the supervisor or township clerk. § 12438, Subd. 5.

34. Actions Upon Official Bonds or to Enforce Liability or Duty of Officer.—Every action shall be prosecuted in the name of the real party in interest * * * : Provided, That any person to whom a cause of action shall accrue upon the bond of any public officer, required to give bond to the people of this State, may prosecute a suit for recovery on said bond in his own name: Provided, further, That actions upon any bond, contract or undertaking lawfully made with any officer of this State, or of any county, township, school district, city or village, or to enforce any liability or any duty enjoined by law to said officer, shall be brought in the corporate name of the body for whose benefit such contract was made, or such liability or duty enjoined. § 12353. See also Sec. 31 of this Guide.

35. Suits to Enforce Corporate Liability or the Performance of Official Duty.—Any suit or proceeding brought for the enforcement of any corporate liability against any of the corporate bodies enumerated in the second proviso of the preceding section, shall be brought against them in their corporate name; but any suit or proceeding brought to enforce the performance of an official duty on the part of any officer or any such corporate body, shall be brought against such officer in his official capacity. § 12354.

CHAPTER IV.

LIABILITY OF TOWNSHIPS.

36. Township Liable to Person Injured on Highways, Etc.—Any person or persons sustaining bodily injury upon any of the public highways or streets in this state, by reason of neglect to keep such public highways or streets, and all bridges, sidewalks, cross walks and culverts on the same in reasonable repair, and in condition reasonably safe and fit for travel by the township, village, city or corporation whose corporate authority extends over such public highway, street, bridge, sidewalk, crosswalk or culvert, and whose duty it is to keep the same in reasonable repair, such township, village, city or corporation shall be liable to and shall pay to the person or persons so injured or disabled just damages, to be recovered in an action of trespass on the case before any court of competent jurisdiction. § 4584. See notes under Sec. 1738 of this Guide.

37. Service May be on Supervisor or Clerk.—In suits or proceedings against townships, service may be made upon the supervisor or township clerk. See Sec. 33 of this Guide.

38. Damages to Property from Defective Highway.—If any horse or other animal, or any cart, carriage or vehicle, or other property, shall receive any injury or damage by reason of neglect by any township to keep in repair any public highway, street, bridge, sidewalk, crosswalk or culvert, the township whose duty it is to keep such public highway, street, bridge, sidewalk, crosswalk or culvert in repair shall be liable to and shall pay the owner thereof just damages, which may be recovered in an action of trespass on the case before any court of competent jurisdiction; but in all actions brought under this act it must be shown that such township has

had reasonable time and opportunity after knowledge by or notice to such township that such highways, streets, bridges, sidewalks, crosswalks, or culverts have become unsafe, or unfit for travel, to put the same in the proper condition for use, and has not used reasonable diligence therein after such knowledge or notice. § 4585. See notes under Sec. 1739 of this Guide.

39. Townships to Keep Highways, Bridges, Etc., in Repair.—It is hereby made the duty of townships to keep in reasonable repair, so that they shall be reasonably safe and convenient for public travel, all public highways, streets, bridges, sidewalks, crosswalks, and culverts that are within their jurisdiction, and under their care and control, and which are open to public travel. See Sec. 1740 of this Guide, and notes.

40. Act Not to Apply to Certain Highways.—The provisions of this act shall not apply to public highways which have not been in use ten years; but nothing in this section shall be construed as exempting townships from maintaining their streets, bridges, sidewalks, crosswalks and culverts, and the approaches to bridges in a safe condition for public travel. § 4587.

TEN YEARS' USE: The provision which limits liability for injuries sustained by reason of defective highways to those highways which have been in use for ten years, applies only to public highways in townships.—Fuller v. City of Jackson, 92 / 197.
MAINTENANCE: The duty of maintaining highways, etc., in a condition safe for public travel applies to all public highways and may be enforced.—McKeller v. Monitor Twp., 78 / 491.
See also notes under Sec. 1741 of this Guide.

41. Township Liability in Damages for Injuries on Highways, Bridges, Culverts, Etc.—No township in this State shall be liable in damages, or otherwise, to any person or persons for bodily injury, or for injury to any property sustained upon any of the public highways, streets, bridges, sidewalks, crosswalks or culverts, in such townships, except under and according to the provisions of this act (Act 283 of 1909—the General Highway Law); and the common law liability of townships of this State, for or on account of bodily injuries sustained by any person by reason of neglect to keep in repair public highways, streets, bridges, sidewalks, crosswalks or culverts, is hereby abrogated. § 4588. See notes under Sec. 1742 of this Guide.

No township shall be liable for any damages sustained by the breakage of any bridge or culvert by any steam engine or steam vehicle weighing more than the lawful carrying capacity of such bridge or culvert at the time it was built. § 4793. As Am. by Act 181 of 1917.

42. Liability of Township in Case of Illegality of Contract Made by Highway Commissioner.—If any contract entered into with the highway commissioner, within the scope of his authority, by any person acting in good faith for the performance of labor or the furnishing of materials to such township shall have been in whole or in part in good faith performed without actual or constructive notice or knowledge of any illegality or irregularity in such contract, and the benefit thereof shall have been received by such township, and the same be a benefit for which such township might, through such commissioner, have lawfully contracted and paid and may lawfully make use of, such township shall, notwithstanding technical irregularities in such contract, or the proceedings antecedent thereto, or violations of the provisions of this act by such

commissioner, be liable the same as a natural person, to pay for such benefits to the person entitled thereto; but the amount to be paid shall in no case exceed the stipulated contract price, nor the value to the township of the benefit received. § 4474.

This statute has always required that the order shall be accompanied by a certificate that the labor has been performed or the material furnished. Later, that part was incorporated making the township liable for contracts of the commissioner, within the scope of his authority, notwithstanding technical irregularities, etc., and also making commissioners and their bondsmen liable for illegal acts. But where the commissioners drew orders on the township treasurer, payable out of any moneys in the treasury belonging to the road district, these orders were not paid, and a mandamus was applied for to compel the township board to levy a tax on the township for their payment; there being nothing in the case to show that the township had had the benefit of the district fund, by misappropriation or otherwise, the mandamus was denied.—People v. Zilwaukee Twp. Bd., 10 / 274.

43. Liability of Townships for Damages for Grade Separation.—The total compensation for damages and expenses, if fixed by agreement, settlement or compromise, or if fixed by a jury, less the total amount assessed against the railroad company or companies, must be paid by the city, township or county in whose name the proceedings are instituted, except in cases where some city, county or township is a party respondent, in which case it must be paid by the city and county or counties, township or townships that are parties to the proceedings, as the case may be, in equal shares. § 4768. See also § 4751, C. L. of 1915.

44. Township Shall Pay Share of Expense for Grade Separation.—The expense of all work to be done by any city, county or township in the matter of separation of grades shall be paid by such city, county or township, or in case work is to be done by a city and county or counties, township or townships, jointly, the expense shall be shared equally among them. Such expense imposed on any city, county or township shall be provided for by taxation in like manner as its other expenses are provided for. § 4776.

45. Costs of Proceedings Relative to Grade Separation.—All the expenses and costs of these proceedings, incurred by any county or township, instituting the same, are to be paid out of the general fund, highway fund, or the fund provided for such purposes as the case may be. It is lawful for the judge, in any case, to order the payment, by the city, county or township instituting the proceedings, to any respondent, of such reasonable attorney fee as he may deem just, not exceeding twenty-five dollars, which may be taxed with the other costs. § 4779.

46. Liability of Township for Support of Inmates of Asylum for Criminal Insane.—Every insane person supported in the asylum is personally liable for his maintenance therein, except in case of convicts who are serving sentences, and for all necessary expenses incurred by the institution in his behalf, and the guardian, relative, city, town, or county that would have been bound by law to provide for and support him, if he had not been sent to the asylum, shall be liable to pay the expenses of his clothing, and maintenance in the asylum, and actual necessary expenses to and from the same. § 1427.

47. County May Require Township to Pay for Support of Insane Criminals.—The expense of clothing and maintaining in the State Asylum, a patient who has been received upon the order of any court, or officer, shall be paid by the county from which he was sent to the asylum, for a period of one year; likewise his actual necessary expenses to and

from the same. The treasurer of the county is authorized and directed to pay to the treasurer of the asylum the bills for such clothing and maintenance, as they become due and payable, according to the by-laws of the asylum, upon the order of the medical superintendent; and the supervisors of the county shall annually levy and raise the amount of such bill, and such further sum as will probably cover all similar bills for one year in advance. Said county, however, has the right to require any individual, town or city that is legally liable for the support of such patient, to reimburse the amount of said bills with interest. § 1428.

48. **Judgments Against Townships.**—Whenever judgment shall have been recovered against any township, or against the officers thereof, in any action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but it shall be the duty of the justice of the peace rendering such judgment, if in a justice's court, at any time after the time for appealing has elapsed, or the clerk of the court, if such judgment is rendered in a court of record and shall not be reversed, on the application of the party in whose favor such judgment was rendered, his attorney, executor, administrator or assigns, to make and deliver to the party so applying a certified transcript of such judgment, showing the amount and date thereof, with the interest to time of payment, and of the costs as taxed, under the seal of the court, if in a court having a seal; and it shall be lawful for the party so obtaining such certified transcript to file the same with the supervisor of the township, if such judgment is against a township. § 12970.

49. **Supervisor to Assess Amount of Judgment on Next Tax-Roll.**—It is the duty of the supervisor, or assessing officer, receiving any such certified transcript of judgment, to assess the amount thereof, with the costs and interest from the date of rendition of judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of the township, upon the then next tax-roll of such township, without any other or further certificate than such certified transcript, as a part of the township tax, adding the total amount of such judgment to the other township taxes, and assessing the same in the same column with the general township tax. And it is further the duty of such supervisor or assessing officer to set forth in the warrant attached to such tax-roll each judgment separately, stating the amount thereof and to whom payable, and the same shall be collected and returned in the same manner as other taxes. And it is further the duty of such supervisor or assessing officer, at the time when he shall deliver such tax-roll to the treasurer or collecting officer of any such township, to deliver to the township clerk a statement in writing, under his hand, setting forth in detail and separately such judgment or judgments, stating the amount of each, with costs and interest as herein provided, and to whom payable. § 12971.

50. **Duties of Supervisor Relating to Judgments Against Villages.**—In any case where a judgment is recovered against any village which, by reason of holding no municipal elections, or for any other reason has no available assessing officer within the jurisdiction of the court wherein such judgment was rendered, the owner of such judgment, or any person knowing the facts acting in his behalf, may make an affidavit, showing that the village against which any such judgment is pending and unsatisfied has no available assessing officer within the said jurisdiction, and file the same with the clerk of the circuit court wherein said judgment is, or

with the justice of the peace having custody of the docket wherein such judgment is written. Thereupon it becomes the duty of the officer making such certified transcript, to attach thereto a copy of said affidavit, the correctness of which copy shall also be certified to in said certificate. Any party receiving such certified transcript of judgment and affidavit may file the same with the supervisor of the township in which any such village, having no assessing officer, is located. It is then the duty of said supervisor to assess the amount of said judgment, with costs and interest, upon the taxable property of said village, which is without an assessing officer, and thereafter the same steps and proceedings shall be had in the premises, as though it were a judgment against the township or townships within which said village is located, save that it shall be assessed against the property within the corporate limits of said village only. § 12970.

JUDGMENTS AND COSTS: As to collection of costs against townships, see Stockwell v. White Lake Twp., 22 / 353. As to collection of judgments, see Shippy v. Mason, 90 / 45; Hammond v. Place, 116 / 628.

51. Duties of Township Treasurer Relating to Judgments, Etc.—It is the duty of the treasurer or collecting officer of any such township, to collect and pay said judgment to the owner or his attorney, on or before the date when such tax-roll and warrant is returnable. In case any supervisor, treasurer, or other assessing or collecting officer neglects or refuses to comply with any of the provisions of this act he is guilty of a misdemeanor, and is liable to be punished by a fine of not more than one hundred dollars and costs of prosecution, or imprisonment in the county jail for a period not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. Nothing herein contained is to be construed to exclude other remedies given by law for the enforcement of such judgments. § 12970.

52. Accounts Between State, County and Township.—The accounts between the State, county and each township are adjusted on the basis of crediting and paying to each the taxes collected by and for each with the interest thereon. The auditor general is required on the first day of January, April, July and October in each year, to make a statement of account between the State and each county respectively, and render the same to the county treasurer of each county, and draw his warrant on the state treasurer, payable to such county treasurer, for all moneys in the State Treasury collected for the county, township, school, highway or any other purposes for such county or township or district thereof, and transmit such warrant to the county treasurer, and notice to the county clerk thereof. At the same time the county treasurer is required to pay to the State all moneys collected and due from their respective counties to the State, as shown by such account so rendered by the auditor general to be due the State. But, on January fifteen, and each thirty days thereafter, until the regular quarterly settlement for the quarter ending March thirty-one, has been made each year, the county treasurer must pay to the State all moneys coming into his hands from the collection of said State tax. The county treasurer of each county must, on or before the first day of February, May, August and November in each year, make out a detailed statement of the account between the county and the several townships or cities, which statement shall show the different funds to which the several debits and credits belong, and render the same to

the township or city treasurer, and pay all moneys shown by said statement, so rendered to the township or city, to the proper receiving officer of the township or city, and notify the township or city clerk of the items and total amount thereof; also a description of the lands upon which such taxes were paid. The county clerk is required to charge such amounts to the county treasurer, and the township or city clerks to charge such amounts to the township or city treasurers, on the books of their respective offices. In the county of Kent, however, the county treasurer is not required to make a detailed statement. § 4085.

ACCOUNTS: This section provides that the accounts between the State, the county, and each township shall be adjusted on the basis of crediting and paying to each the taxes collected for each, treating the moneys arising from the collection of delinquent taxes, in the hands of the county treasurer, as a part of the funds for which the county must account to the several townships.—Township of Cumming v. Ogemaw Co., 100 / 567.

Mandamus will not lie to compel a county to pay over to a township moneys claimed to be due the township for delinquent taxes received by the county from the Auditor General and from individuals, where the account between the county and the township has not been stated, and no settlement has been made showing the state of said account. In such a case an action of assumpsit can be maintained by the township to ascertain the amount due from the county.—Township of Cumming v. Ogemaw Co., 93 / 314.

The county treasurer cannot deduct from the amount due the township an amount due to the county for delinquent personal taxes, for the collection of which he has issued his warrant to the township treasurer.—Muskegon v. Soderberg, 111 / 559.

Townships are liable for the entire amount of state and county taxes levied on personal property therein, whether or not it is collected of the persons from whom it is due.—Muskegon City v. Muskegon County, 123 / 272.

53. Township Chargeable for Losses Sustained by Default of Officers.—All losses sustained by the default of any township officer in the discharge of any duty imposed by the act providing for the assessment and collection of taxes, shall be chargeable to such township. § 4089.

LIABILITY OF TOWNSHIP: A township must make good the defaults of its treasurer in not accounting for the taxes belonging to the county.—County of Oceana v. Township of Hart, 48 / 319.

A town treasurer is bound to account either in money or in the return of unpaid taxes to the full amount of the tax levy put in his hands for collection.—Id.

The right of the county to charge such deficiency over to the town is not lost by the failure to have it added to the next year's taxes; and there is no statute preventing the enforcement of its collection by mandamus at any time within ten years.—Oceana County v. Hart Township, 48 / 319.

The township is liable to a school district for school moneys lost through the defalcation of the township treasurer.—Smith v. Jones, 136 / 532.

A county cannot sue a township at common law for the amount of taxes which the township treasurer should have paid into the county treasury but has embezzled. But it has a statutory right of action upon the township treasurer's bond, or it can enforce by mandamus against the township authorities its statutory right to have the amount of taxes reassessed against the township. And the failure of the suit on the bond does not bar the remedy against the township itself.—Hart Township v. Oceana County, 44 / 417.

54. Errors by Township Officer Relative to Taxes Shall Be Charged to Townships.—If the auditor general shall discover before the sale of any lands, as aforesaid, that for any reason they should not be sold, he shall cause the same to be withheld from sale; and if the error originated with the township or county officers the amount of such taxes shall be charged against the county from which the same were returned; if such error was made by a township officer, the amount thereof shall be charged by the county treasurer to the township in which such error occurred. § 4093.

OBJECT: The object of charging back these taxes is to offset or discharge the credit already given to the county for the same taxes when first returned.—People v. Aud. Gen., 9 / 136; Aud. Gen. v. Gurney, 109 / 474.

55. Liability of Townships for the Support of the Poor.—The provisions of law relating to the liability of townships for the support of poor persons will be found in Chapter XIII of Part XII. See Secs. 1172 to 1206 of this Guide.

CHAPTER V.

PUBLIC UTILITY FRANCHISES.

56. Public Utility Franchises.—No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election. Const. VIII, 19.

57. Public Utility Corporations Must Obtain Franchise to Use Highways.—No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such township; nor to transact a local business therein without first obtaining a franchise therefor from such township. The right of all townships to the reasonable control of their streets, alleys and public places is hereby reserved to such townships. Const. VIII, 28.

FRANCHISE: As to the conflicting rights of a municipality and a street railway company at the expiration of the company's franchise, see Det. v. D. U. R., 172 / 136, 157.

As to who may raise the question as to whether a telephone company had procured a franchise from the township, see Upton Telephone Co. v. Ingersoll, 178 / 187.

Constitutional provisions, as well as legislative enactments, must be held prospective in operation only, unless they carry upon their face an intention to be retrospective. * * * Constitutional rights are not subject to impairment by later constitutional provisions any more than by legislative enactments.—City of Lansing v. Mich. Power Co., 183 / 400, 409.

58. No Franchise for More Than 30 Years.—No franchise or license shall be granted by any municipality of this State for a longer period than thirty years. Const. VIII, 29.

59. Board May Grant Franchises to Use Highways. The township board of any township may grant to any person, partnership, association or corporation the right to use the highways, streets, alleys, and other public places of the township to set poles, string wires, lay pipes or conduits or to lay tracks for railways and to operate and maintain the same and the right to transact a local business in such township, subject to such reasonable regulations as said board shall prescribe from time to time. § 4836.

NOTE: For constitutional provisions relative to franchises see the foregoing section of this Part.

Distance poles must be from center of Highway. See Sec. 1604 of this Guide.

60. Franchise Shall Be Submitted to Electors.—After a franchise has been granted by a township board and accepted in writing by the grantee, the action of the board in granting the franchise shall be submitted to a vote of the electors of such township for confirmation at the next regular election. § 4837.

61. Township Clerk to Give Notice of Election.—The township clerk, at least twenty days before the next regular election, shall give notice that the question of the confirmation of the granting of such franchise will be submitted to a vote of the electors by posting a written or printed notice in three or more public places in such township. Printed ballots shall be prepared by the township clerk and kept at the polling place for the use of the electors and shall be in substantially the following form:

Confirming grant of franchise to.....
for the purpose of..... [ ] Yes.

Confirming grant of franchise to.....
for the purpose of..... [ ] No. § 4838.

62. **When Grantee May Demand Submission of Franchise.**—The grantee of such franchise may have the same submitted to a vote of the electors of the township at a special election duly called, to be held at a time to be fixed by said township board not more than sixty days after the acceptance of such franchise by the grantee, if the grantee shall file with the township clerk at the time of the acceptance of such franchise a demand in writing that the same be submitted to the electors at a special election, and shall at the same time pay the township board such a sum of money as shall be sufficient, in the opinion of said board, to defray the expense of said special election. § 4839.

63. **Franchise Irrevocable if Confirmed.**—If a majority of the electors of such township voting upon the question shall vote in the affirmative, such franchise shall be confirmed and shall be irrevocable, otherwise it shall not be confirmed. § 4840.

64. **Telegraph Companies May Use Highway with Consent of Authorities.**—Telegraph companies are authorized to enter upon, and construct and maintain lines of telegraph through, along, and upon any of the public roads and highways, or across or under any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines. But said telegraph companies before the construction and erection of said lines and poles, shall first obtain the consent of the duly constituted authorities of the city, village or township through or along which said telegraph lines and poles are to be constructed and erected. The lines shall be so constructed as to not incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters; nor shall this act be so construed as to authorize the construction of any bridge across any of the waters of this State. This act shall not be construed to authorize any such association to injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway or purposely left there for shade or ornament. Said association, instead of running or placing their wires on posts, may, if they choose, run or place the same under ground, with a suitable or proper covering for the protection of the same. § 4469.

65. **Telephone Companies May Use Highways with Consent of Authorities.**—Telephone companies have power to construct and maintain lines of wire or other material, for use in the transmission of telephonic messages along, over, across, or under any public places, streets and highways, and across or under any of the waters in this State, with all necessary erections and fixtures therefor. But said telephone companies, before the construction and erection of said telephone lines and poles, shall first obtain the consent of the duly constituted authorities of the city, village or township through or along which said telephone lines and poles are to be constructed and erected. The lines shall not injuriously interfere with other public uses of the said places, streets and highways, or injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway, or purposely left there for shade or ornament, nor shall the same interfere with the navigation of said waters, or the running of railway trains. § 4470.

66. **Board May Grant Use of Highways for Street Railways.**—Any street railway company may extend, construct, use and maintain its road, in and along the streets and highways of any township adjacent to said

city or village, or may construct, use, maintain and own a street railway for the transportation of passengers in and along the streets and highways of any township, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township. § 8544.

[See also preceding sections of this Part.]
FRANCHISES: A franchise may be granted for thirty years but not in perpetuity.—Atty. Gen. v. Ry., 96 / 68.
Street Railways operating on country highways under franchises granted by the several townships through which they pass, are bound by such agreements.—Kissane v. Ry., 121 / 179.
The conditions in a franchise which a street railway obtains from a township are as binding upon the company as if imposed by the Statute.—Grosse Pointe Twp. v. Ry., 130 / 366.
The overseer of highways is not given the power to determine the location in a highway of the tracks of a street railway company. That power is vested in the township board.—Freud v. Ry., 133 / 421.
The highway commissioner has nothing whatever to do with the granting of these franchises.—Smith v. Jackson Traction Co., 137 / 26.
Public franchises create contractural relations and such statutory contracts are enforcible in the courts.—Ross Twp. v. M. U. R., 165 / 40.

67. Township Cannot Revoke Street Railway Franchise.—After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so conferred. § 8545.

REVOCATION: By this section the authorities of a township are forbidden to deprive any company of privileges conferred and accepted.—G. R. St. Rys., 48 / 437; Elec. Ry. v. Grand Rapids, 84 / 258; Hamtramck Twp. v. Ry., 122 / 472; People v. D. U. R., 156 / 660.

68. Grade of Railway Not to Be Changed Without Consent.—In constructing their railways, every such company shall conform to the grades established, or which may be established by the common council or other corporate authorities of the city, village or township, for the street traversed by said railways, nor shall the company at any time alter or change the grade or line of any street, without the consent of the common council or other corporate authorities of the city, village or township, first had and obtained. § 8548.

CHANGE OF GRADE: An electric railway company may change the grade of a highway with the consent of the proper municipal authorities without compensating the adjoining proprietors.—Austin v. Ry., 134 / 150.

CHAPTER VI.

GOOD ROADS DISTRICTS.

69. Contiguous Townships May Form Good Roads Districts.—Any two or more organized townships, or any one or more townships, and one or more villages, or one or more townships and one or more cities, or any combination of townships, villages or cities lying contiguous in any county, are hereby authorized to form themselves into a district to be known as a good roads district, and such district shall operate under the provisions of the county road law (Chap. IV, General Highway Law, being § § 4317-77, C. L. of 1915), except as herein otherwise provided; but should any county in which a good roads district be formed, afterwards adopt the county road system, such good roads district shall be thereby dissolved, excepting for the purpose of completing work then

under contract, or for the payment of any bonds that may have been issued, by the return to the district of all moneys assessed in said district for county road taxes when working under the county road system, until all bonds issued by said district are retired. In case such district shall become so dissolved and come under the county road system, any funds of the good roads district remaining in the county treasury, or thereafter paid therein, to the credit of such good roads district fund shall be returned to the highway funds of the different townships, villages and cities composing such good roads district in the proportion in which the good roads district tax was paid by them for the last preceding year. § 4337.

70. Method of Submitting Question.—On petition of not less than ten per centum of the resident freeholders of each organized township, incorporated village and city as shown by the tax rolls of the preceding year, which is desirous of joining in a good roads district, the board of supervisors may submit the question of adopting such system, to a vote of the electors of such townships, villages and cities, so petitioning, not later than at the next general election. Such vote may be taken at a special election called for that purpose, or at a general election, and the following form or resolution shall be sufficient for submitting the question, viz.: Resolved, That the question of adopting the good roads district system be submitted to a vote of the electors of the (townships of ....., villages of ....., cities of .....) of the county of ..... at (the general or special election) to be held on the ..... day of ....., nineteen hundred ..... If a special election is to be called, a clause added to the resolution in form following shall be sufficient for that purpose, viz.: And a special election is hereby called to be held in the several townships and wards of said county as above set forth, on the day last aforesaid, for the purpose of taking such vote. § 4338.

71. Notice and Holding of Election.—After the adoption of the resolution by the board of supervisors, the county clerk shall give notice thereof to the several townships, incorporated villages and cities petitioning to form such district, as shown by the tax roll of the preceding year, in the form of a handbill to be posted in three or more public places in each township and ward, at least two weeks before the time of such election, and by publication in a newspaper or newspapers having a general circulation throughout such district. Ballots shall be prepared and distributed by the same officers as is provided by law for general elections. At the time mentioned in such resolution such election shall be held and the vote taken accordingly: Provided, That no township, village or city, not petitioning to form and become a part of such road district, shall vote upon the question of adopting such system. § 4339.

72. System Becomes Operative Upon Adoption.—If upon the canvass of the votes cast on such question at such election, it shall appear that a majority voting thereon is in favor thereof, then the good roads system shall be considered as adopted in such district, and thereupon the provisions of this act and of the county road law, shall be and become operative in such district. § 4340.

73. Good Roads Commissioners.—In each township, incorporated village and city belonging to such district, shall be elected one good roads

commissioner, which commissioners, shall constitute a board of good roads commissioners, who will have the same rights, powers, obligations and duties in the good roads district as county road commissioners under the county road law. The terms of office of such good roads commissioners shall be two years, and their compensation shall be fixed by the board of supervisors. In the first instance, or in case of a vacancy in the office of any good roads commissioner, such office shall be filled by appointment by the township board, village or city council, as the case may be. The board of good roads commissioners so constituted may adopt such rules and regulations for calling and holding meetings and for the transaction of business as they may deem best. They shall annually appoint one of their number chairman to hold during the pleasure of the board. The board of good roads commissioners shall act as an administrative board only, and they shall appoint a competent superintendent, skilled in road building, who may or may not be an engineer, who shall direct all road building operations in the district. All orders drawn upon the district treasurer shall be countersigned by such superintendent or engineer. The county clerk and county treasurer shall officiate the same for the district so formed as is provided by law in case of the adoption of the county road system. The county clerk may deputize the superintendent or engineer to act as clerk for the board of good roads commissioners. § 4341. As Am. by Act 268 of 1917.

74. How Township May to Become Part of District.—In any county in which a good roads district may be formed it shall be the privilege of any organized township, incorporated village or city, lying contiguous to but not already belonging to such good roads district, to become a part of the same whenever such township, village or city shall so decide by a majority vote of the electors of such township, village or city, voting thereon, at a general or special election: Provided, That such township, village or city shall not become a part of such good roads district until the question has been approved by a majority vote of the electors of such district. Upon petition of at least ten per centum of the resident freeholders residing in any such township, village or city as shown by the tax rolls of the preceding year, it shall be the duty of the township board, village or city council, as the case may be, to provide for the holding of such election, at a date not later than the next general election. § 4342. As Am. by Act 268 of 1917.

75. Determination of Amount of Tax.—On or before the first day of October of each year, the said board of good roads commissioners shall determine upon the amount of tax which, in their judgment, shall be raised for such year in the district, which tax shall not exceed three dollars upon each one thousand dollars' valuation of said district, according to the assessment roll of the last preceding year. At the annual meeting of the board of supervisors held in October, the county clerk shall lay such determination before the board of supervisors and the board of supervisors shall pass upon the said determination and decide upon the amount to be raised, which shall not be less than that determined upon by the said board of good roads commissioners, excepting by a two-thirds vote of the members elect of said board of supervisors. After the said board of supervisors shall have decided upon the amount of tax to be raised, the said board of supervisors shall apportion such

tax between the several districts, villages and cities of said good roads district, according to their assessed valuation. § 4343.

76. Levy and Collection of Tax.—The supervisors or other assessing officers shall levy and apportion the tax so apportioned to their respective townships, villages and cities, upon the tax rolls of such townships, villages and cities. The tax so assessed shall be collected and paid to the county treasurer to be by him kept in a separate account and to be paid out only upon the order of said board of good roads commissioners, signed by its chairman and countersigned by the clerk. § 4343.

77. How Moneys Shall Be Expended.—All moneys belonging to the good roads district shall be expended by the good roads commissioners in the said good roads district exclusively for the purposes mentioned, and provided for under the county road law. § 4343.

78. What Townships Shall Not Adopt This System.—No portion of any county now under the provisions of the county road law shall adopt the provisions of this act, and should any county in which a good roads district be formed, afterwards adopt the county road system, such good roads district shall be forthwith dissolved, excepting for the purpose of completing work then under contract. § 4344.

79. Disposition of Funds on Dissolution of District.—Any funds remaining in the county treasury, or thereafter paid therein, to the credit of the good roads district fund shall be returned to the highway funds of the different townships, villages and cities composing such good roads district in the proportion in which the good roads district tax was paid by them for the last preceding year. § 4344.

80. Rescinding Vote; Disposition of District Funds, Etc.—The board of supervisors of any county which has adopted or may hereafter adopt the provisions of this act shall, upon petition of at least ten per centum of the resident freeholders residing in each of the several townships, incorporated villages and cities in the district as shown by the tax rolls of the preceding year, submit the question of rescinding the vote by which it was adopted, and the resolution to submit, and all proceedings subsequent thereto, shall, as nearly as may be, follow the forms and manner of proceedings provided for voting on the question of adopting the county road system. When any district shall rescind the vote by which it has adopted the good roads district system, this act shall cease to be operative except for the purpose of completing work under contract at the time of such rescission. The funds then remaining in the county treasury or thereafter paid therein to the credit of the district shall be returned to the highway funds as provided in the preceding section. All district roads shall revert to the townships, and all highways and bridges shall thereafter be laid out, built and maintained in all respects as though such district had never adopted the good roads district system: Provided, That parts of townships may exercise the same rights as townships in chapter three of this act: Provided further, That the good roads commissioner who represents a part of a township shall be a resident of the district which he serves, and shall be elected at the annual town meeting, in the same manner as overseers of road districts are now elected. § 4345.

"Chapter three of this act," above referred to, is Sections 69-81 of this Guide.

81. Question of Issuing Bonds to Be Submitted.—Whenever the board of supervisors of the county, by a majority vote of all the members-elect, resolves to contract indebtedness or issue bonds to raise money for the construction and maintenance of district county roads, the question shall be submitted to a vote of the electors of the district at a general or a special election called for that purpose. Notice of the submission of such resolution to a vote of the electors and, in case a special election is called, notice of the calling of such special election shall be given in the same manner and for the same length of time as now prescribed by law. If a majority of the electors voting on such resolution shall vote in favor thereof, it shall be deemed to have carried. The manner of stating the question upon the ballots shall be prescribed by the resolution of the board of supervisors. No bond or evidence of indebtedness shall be negotiated at less than par and the accrued interest. All money raised by the board of supervisors for the construction and maintenance of district county roads shall be expended under the direction of the board of district road commissioners. Such action shall not be taken by the board of supervisors, except upon the petition of ten per centum of the resident freeholders of each of the several municipalities comprising such good roads district. § 4346.

CHAPTER VII.

TOWNSHIPS IN COUNTIES HAVING COUNTY ROAD SYSTEM.

[Chapter IV of Act 283 of 1909, as amended (the General Highway Act), being §§ 4347-77, C. L. of 1915, prescribes a county road system, effective in counties which adopt it.]

82. County System Not to Prohibit State Reward Roads.—The adoption of the county road system in any county shall not prohibit any organized township from building state reward roads with moneys raised by tax or by bonding, and in townships where money has been raised by bonding to build state reward roads, the township clerk shall certify to the board of supervisors at the annual meeting thereof the amount of such bonds remaining unpaid, and the county road tax paid by such township shall be returned to the township each year to be applied in payment of such bonds until they are fully paid: Provided, however, That no township shall be entitled to the return of its county road tax until it shall have paid as much money in county road taxes as may have been expended on county roads within said township by the county road commissioners. § 4372.

It is within the power of the legislature to provide by statute that, in consideration of previous expenditures by a township for state reward roads and county road taxes paid out of proportion to benefits, the township should have, under certain contingencies, through a process of rebate, relief in part from the burden of such taxation for a time thereafter.—Clearwater Twp. v. Kalkaska Suprs., 187 / 518.

PURPOSE: The purpose was to provide some method by which, in the long run as the system of county roads develop, the benefits may ultimately be equitably distributed to the township taxed for that purpose in approximate proportion to the burden of taxation imposed upon them.—Twp. of Clearwater v. Suprs., 187 / 516.

PROVISO: This proviso is restricted to the section in which it appears, limits it and takes something back from the power first declared. Adjustment need not be made yearly on the basis of each year's transactions, but the whole period in which the county road system has been in force in the county is the basis for computation.—Twp. of Clearwater v. Suprs., 187 / 517.

83. Action by Township Intending to Build Road.—In case any organized township in a county under the county road system shall decide to build a mile or more of state reward road the township board

of such township shall file a written notice with the board of county road commissioners through the county clerk at least thirty days before the beginning of the work, stating that it is the intention of such township to build a certain piece or pieces of road, which shall be fully described in such notice, and thereupon the board of county road commissioners shall furnish an engineer at the expense of the county, who shall establish a grade for such road or roads, and shall set grade stakes on each side of the road, not more than one hundred feet apart, to which the grade shall conform. Should a road which the township has decided to improve be a portion of one that the county road board is improving or proposes and intends to improve, then such township shall build such piece of road of such material and of such width as will conform to the proposed plans of such county road board for such road. § 4373. As Am. by Act 356 of 1917.

84. Township Road Plan to Continue Until Abolished by Vote.—Any township which may have adopted the township road plan provided for in sections twenty-six and twenty-seven of act number two hundred thirty of the public acts of eighteen hundred ninety-five, as originally set forth, and which has raised money and built roads in good faith, shall continue under such plan until by a majority vote of the electors of such township voting thereon, the township shall abolish such system; and while under such system they shall not, without their consent, be liable to any tax for a county road system: Provided, That the county in which such township or townships are situated shall have adopted the county road system previous to nineteen hundred thirteen. § 4377. As Am. by Act 271 of 1917.

"Sections 26 and 27 as originally set forth," above referred to, are §§ 4287 and 4288, C. L. of 1897. As amended said sections are Sections 82 and 83 of this Guide.

See also Act 69 of 1905, under which townships might, prior to 1909, adopt a township system of roads.

TOWNSHIP ROAD PLAN: For a construction of Act 230 of the Public Acts of 1895, above referred to, see Saginaw Suprs. v. Hubinger, 137 / 73.

85. Township Shall Not Adopt Township Road Plan.—No township in the State not now in operation under this township system shall adopt it. § 4377. As Am. by Act 271 of 1917.

86. Township May Abandon Township Road Plan.—Any township which may have adopted said township road plan as aforesaid and which shall desire to discontinue and abandon the same may do so in the following manner: Upon presentation to the township board of a petition, signed by not less than twenty-five residents and taxpayers of said township, requesting the discontinuance of such plan, it shall be the duty of said board to submit the question of the discontinuance of the township road plan to the determination of the electors of the township at the next ensuing April or November election, or at a special election called for that purpose. The form of ballot shall be prescribed by the township board and the votes upon said question shall be cast, counted, canvassed and returned in the same manner as is now provided by law for casting, counting, canvassing and returning votes cast at elections for county officers. If the proposition of discontinuing the township road plan shall be decided in the affirmative, it shall be the duty of the board of county canvassers to immediately certify such fact to the clerk of the county, who shall present such certificate to the board of supervisors at its next ensuing meeting; thereupon said board of supervisors shall by resolution

declare that the township road plan in said township has been duly and formally abandoned and that henceforth said township shall be deemed subject in all respects to the provisions of this chapter. Immediately upon the adoption of the resolution aforesaid, the township so rescinding the township road plan shall be subject in all respects to the county road system and to the rights, privileges, duties and obligations thereby imposed. § 4377. As Am. by Act 271 of 1917.

87. **Liability of County to Townships Under Motor Vehicle Law.**—Any county adopting the provisions of this chapter (Chap. IV of Act 283 of 1909—the County Road Law) to which money is apportioned and paid under the provisions of act three hundred two of the public acts, nineteen hundred fifteen (§ § 4797-4835, C. L. of 1915—the Motor Vehicle Law), shall be deemed liable to any township in said county operating under the provisions of the township road plan as aforesaid for such amount as will represent the proportionate share of said township of the money thus apportioned and paid. It shall be the duty of the board of supervisors to declare by appropriate resolution such proportionate amount which shall be based upon the ratio that the valuation of the property in said township as last equalized bears to the said valuation of the entire county. Upon the adoption of said resolution, it shall be the duty of the county treasurer to pay over to the treasurer of the township to be used for highway purposes, pursuant to the general laws of the State, such amount as the township may be entitled to receive. § 4377. As Am. by Act 271 of 1917.

A township cannot claim that an act of the legislature, exempting such townships from taxation for county road systems as shall establish a township road system, constitutes a contract, the obligations of which a subsequent legislature cannot impair by repealing the act, as the municipality is but a government agency.—Supervisors v. Hubinger, 137 / 72.

CHAPTER VIII.

TOWNSHIP AND DISTRICT LIBRARIES.

88. **Constitutional Provisions Relative to Libraries.**—The legislature shall provide by law for the establishment of at least one library in each township and city; and all fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such libraries. Const. XI, 14.

89. **When Tax May Be Voted for Library.**—When fifty voters of any township present a petition to the clerk of the township, asking that a tax be levied for the establishment of a free public library in such township, and specify in their petition the rate of taxation, not to exceed one mill on the dollar, such clerk shall, in the next legal notice of the regular annual election in such township, give notice that at such election every voter may vote for a mill tax for a free public library, or against a mill tax for a free public library, specifying in such notice the rate of taxation mentioned in such petition; and if the majority of all the votes cast in such township be for the tax for a free public library, the tax specified in such notice shall be levied and collected in like manner with other general taxes of said township, and shall be known as the library fund, and when such free public library shall have been established and a board of directors elected and qualified, as hereinafter provided, it shall be the duty of such board of directors on or before

the first Monday in September of each year, to prepare an estimate of the amount of money necessary for the support and maintenance of such library for the ensuing year, not exceeding one mill on the dollar of the taxable property of the township, and report such estimate to the supervisor of such township for assessment and collection, the same as other township taxes, and the same shall be so assessed and collected; and the corporate authorities of any such township may exercise the same powers conferred upon the corporate authorities of cities under this act. § 3440.

90. **Town Board May Appoint Temporary Library Board.**—As soon as may be after any township shall have voted to establish a free public library, and any township where there is now a free public library and no library board has been elected, the township board of any township is authorized to appoint a temporary board of six directors, to be known as the provisional library board of the township and to hold office until the election, at the next annual township meeting, of a permanent library board of the township. § 3442.

91. **Election of Permanent Library Board.**—At the next annual township meeting, there shall be elected a permanent library board. Such permanent library board shall consist of six directors, two of whom shall be elected for one year, two for two years and two for three years. Annually thereafter there shall be elected two directors, who shall hold office for three years, and until their successors are elected and qualified. Such provisional and permanent library board shall have the same powers as are by this act (§ § 3431-3447) conferred upon the boards of directors of free public libraries in cities. § 3442.

92. **Townships, Etc., May Unite.**—The people of any township adjacent to or adjoining any other township, any village or city, which supports a free public and circulating library and reading room under the provisions of this act, may be united thereunto for the same purpose under the following conditions. § 3444.

93. **Conditions Prescribed.**—Upon receipt of a petition signed by not less than ten per cent of the electors in any township, based on the highest vote cast at the last regular election for township officers of such township, addressed to the township board, requesting that a meeting be called of the electors in such township, to consider making a contract with any township, city or village supporting and maintaining a free public circulating library and reading room under this act, or under any special act, for the use of its privileges by the residents of such township, the township board shall call a meeting of the electors of said township by posting notices in at least five public places within said township not less than ten days previous to such meeting. At the meeting so called the electors present shall determine whether the township shall enter into a contract for the use of any free public circulating library and reading room in any township, city or village, as the case may be, and a tax levied for the purpose of paying for such use, in case the electors shall decide to enter into such contract; but the tax so levied shall in no case exceed one mill upon the dollar of the assessed valuation of such township. If a majority of those present and voting shall be in favor of the township contracting for the use of a free public circulating library and reading room maintained in any township, city or village, the township board shall have

power to enter into such contract and shall levy and collect the tax herein provided for, which tax when collected shall be placed in a fund to be known as the "library fund" and said tax shall be paid over by the township treasurer to the treasurer of the township, city or village in which said library is located, on the first day of January, February and March of each year, to be disbursed subject to the provisions of section five of this act. The board of library commissioners of any township, city or village, supporting and maintaining a free public circulating library and reading room under this act, or under any special act, are hereby authorized and empowered to enter into a contract with any township to permit the residents of said township the full use of such library, upon terms and conditions to be agreed upon between such board of library commissioners and such township board; but in no case shall such contract run for a longer term than three years. § 3445.

94. When to Have Use of Library.—The people of the said township uniting with another township, or with a village or city, shall, after they shall have paid their first taxes therefor, and thereafter while continuing so to do, have all rights in the use and benefits of said library that they would have had had they lived in the township where the same shall have been established, subject to uniform rules and regulations established by the board of library commissioners thereof. § 3446.

95. Townships May Join With Cities or Villages.—The people of villages may join with townships, or townships with villages, or either with cities, by complying with similar provisions for the purpose of maintaining, supporting and receiving the benefits from a free public circulating library. § 3447.

96. Town Library Under Control of Township Board.—A library may be maintained in each organized township which shall be the property of the township and under the control of the township board of said township. All actions relating to such library or for the recovery of any penalties lawfully established in relation thereto, shall be brought in the name of the township. § 5740.

LIBRARIES: Both the Constitution of 1850 and the new Constitution of 1909 require the legislature to establish at least one library in each township. Libraries are a recognized factor of civilization, a valuable instrumentality in education. They enlarge and supplement the work of schools and are within the proper range of school apparatus, and free public libraries are supplemented to and a part of the educational system of the State.—Atty. Gen. v. Thompson, 168 / 518.

97. Board May Dispose of Library to School Districts or Merge into Free Public Library.—If in the judgment of said township board the people of said township will be better served by disposing of said library to the several school districts of the township, said board shall have authority to take such action, or the said board may authorize the merging of the township library into a free public library in accordance with the statutes authorizing the establishment of such free public libraries, and after such merging the free public library so established shall receive all the books of the former township library, and the township library shall be considered abandoned. § 5740.

98. Clerk to Represent Township in Actions Concerning Library.—When any legal action is taken or becomes necessary concerning the township library, the township clerk shall represent the township in all actions concerning said library. § 5740.

99. Library in Township School District.—When any township has already been organized as a township school district or shall hereafter be organized as a township school district, the control of the township library shall pass from the township board to the board of education of such township, and all rights, powers and duties heretofore exercised by the said township board or the members thereof shall be thereafter exercised and performed by the township board of education through the proper officers. § 5740.

100. Who Entitled to Privileges of Library.—All residents of the township are entitled to the privileges of the township library, subject to such rules and regulations as may be lawfully established in relation thereto: Provided, That persons residing within the boundaries of any school district, in which a district library has been established, shall be entitled to the privileges of such district library only. § 5741.

101. Duty of Board Relating to Township Libraries.—The township board shall have charge of the township library and the township treasurer shall apply for and receive from proper authorities all moneys appropriated for the township library and shall keep a separate account of such funds. The township treasurer shall pay out such library moneys on the order of the township clerk, countersigned by the supervisor. The township board shall purchase books and procure the necessary appendages for the township library. When the township library shall pass to the control of the township board of education, the township treasurer shall continue to apply for and receive all library moneys and pay them over to the treasurer of the board of education upon proper warrant of the township district. § 5742.

102. Board Accountable for Care, Etc., of Libraries.—Said board shall be held accountable for the proper care and preservation of the township library, and shall have power to provide for the safe keeping of the same, to prescribe the time for taking and returning books, to assess and collect fines and penalties for the loss or injury of said books, and to establish all other needful rules and regulations for the management of the library, as said board shall deem proper, or the superintendent of public instruction may advise. § 5743.

103. Library, Where to Be Kept, Appointment of Librarian, Etc. - The township board shall cause the township library to be kept at some central and suitable place in the township which it shall determine. Said board shall also, within ten days after the annual township meeting, appoint a librarian for the term of one year to have the care and superintendence of said library, and such librarian shall be responsible to the township board for the impartial enforcement of all rules and regulations lawfully established in relation to said library. § 5744.

104. District Library Entitled to Books from Township Library.—Any school district, by a majority vote at an annual or special meeting, may establish a school district library, due notice of said action to be stated on the annual or special meeting notice, and such district shall be entitled to its just proportion of books from the library of any township in which it is wholly or in part situated, to be added to the district library, and also to its equitable share of any library moneys remaining unexpended in any such township or townships at the time of the establishment of such district library or that shall thereafter be raised by tax

in such township or townships or that shall thereafter be apportioned to the township for library purposes. § 5745.

105. Board of Education in Township District to Have Charge of Library.—The district board of any school district or the board of education of any township school district shall have charge of such library and provide the necessary conveniences for the proper care of such library, and said board shall be responsible for and shall use all moneys raised or apportioned for its support in accordance with the provisions of law. § 5746.

DISTRICT LIBRARIES: District libraries are under the care and management of the district board whose control is general and who make selections and purchases and provide for the safe keeping and use of the books.—Maynard v. Woodard, 36 / 424.

Nothing but poverty can make it proper for any school district to deprive itself of the valuable aid of libraries which enlarge and supplement the work of the teacher and educate people of all ages as no other instrumentalities can educate them.—Maynard v. Woodard, 36 / 425.

BEQUESTS: A school district may lawfully accept a bequest of a fund to be invested and the interest expended in purchasing and keeping up a district library, and it is legally capable of administering such a trust.—Maynard v. Woodard, 36 / 422.

106. Township Clerk to Report to Superintendent of Public Instruction.—The township clerk shall give in his annual report to the superintendent of public instruction such facts and statistics relative to the management of the township library and the library moneys thereof as said superintendent of public instruction directs, and where school officers report to the township clerk they shall include similar information in said report to said clerk. § 5747.

107. When Township or Districts to Forfeit Library Moneys.—In case the township board of any township, or the district board of any school district, or the board of education of any village or township, fails to make the reports required by this act, or in case it appears that any township or school district or township district, or village failed to use the library money in strict accordance with the provisions of law, such township or district or township district or village shall forfeit its share of the library moneys that are apportioned for the ensuing year, and such money shall be apportioned to other township districts or villages in the county as hereinafter provided. § 5748.

108. Statement of Townships or Districts Entitled to Library Moneys.—The superintendent of public instruction shall annually, and previous to the fifteenth day of July, transmit to the clerk of each county a statement of the townships, districts, township districts, villages and cities in his county that are entitled to receive library moneys, giving the number of children in each case between the ages of five and twenty years as shall appear from the annual reports of such townships, districts, township districts, villages or cities for the school year last ending. Said clerk shall file such statement in his office and shall forthwith furnish a copy thereof to the county treasurer. The state superintendent shall also furnish a copy of such statements to the township clerks or city clerks in each county. § 5749.

109. Apportionment of Fines and Penalties for Library Purposes.—The proceeds of all fines for any breach of the penal laws of this State, when collected in any county and paid into the county treasury, together with all moneys heretofore collected and paid into said treasury on account of such fines and not already apportioned, shall be apportioned

by the county treasurer in accordance with the directions of the superintendent of public instruction, as provided in the preceding section, before the first day of August in each year, among the several townships, districts, township districts, villages and cities in the county, which money when received by the proper authorities shall be exclusively applied to the support of township, district, township district, village and city libraries and to no other purposes. § 5750. [See also Sec. 88 of this Chapter.]

110. Township or School District May Vote Tax for Support of Library.—The qualified voters of each township shall have power, at any annual township meeting, to vote a tax for the support of libraries established in accordance with the provisions of this act (General School Law, C. L. of 1915, § 5641 et seq.), and the qualified voters of any school district, in which a district library shall be established, shall have power, at any annual meeting of such district, to vote a district tax for the support of said district library. When any tax authorized by this section shall have been voted, it shall be reported to the supervisor, levied, and collected in the same manner as other township and school district taxes. § 5751.

111. District Board May Donate or Sell Library Books to Township.—The district board or board of education of any school district may donate or sell any library book or books belonging to such district to the township board, where there is a township library, and such books shall thereafter form a part of the township library. § 5752.

112. Township May Borrow Money for Free Public Library.—The township board of any organized township and the village council, or board of trustees, of any incorporated village in the State of Michigan are hereby authorized and empowered, upon an application signed by not less than twenty-five qualified electors of such township or incorporated village being first filed with the said township board, village council, or board of trustees, as the case may be, to borrow a sum of money, not exceeding one per cent of the assessed valuation of such township, or incorporated village, on the faith and credit of such township, or incorporated village, and to issue the bond, or bonds of such township, or incorporated village, therefor; the money so borrowed to be used for the purpose of establishing a free public library, for purchasing a site for the same or constructing buildings thereon: Provided, That a majority of the voters of such township, or incorporated village, voting thereon at a township meeting, a general election, or at a special election called by the township board, or at a general or special election called by the village council, or board of trustees, for that purpose, shall vote in favor thereof. Act 5 of 1917, Sec. 1.

113. Question of Issuing Bonds for Library Shall Be Submitted to Voters.—The question of issuing the bonds, provided for in section one of this act, shall be submitted to the legal voters of such township, or incorporated village, by the township board, the village council or board of trustees, within thirty days after the filing of the application mentioned in section one, giving due notice thereof by causing the date, place of voting and object of said election to be stated in written or printed notices to be posted in five public places in such township, or incorporated village, at least ten days before the time fixed by said board for such election, and by publishing the same in at least one newspaper

published in said township, or incorporated village, or if none be published in said township, or incorporated village, then in some newspaper published in the same county, which is circulated in such township or incorporated village, at least two weeks before the time of such election. Such notice shall state the amount of money proposed to be raised by such bonding, and the purpose or purposes to which it shall be applied. Act 5 of 1917, Sec. 2.

114. Form of Ballot.—The vote upon such proposition shall be by printed ballot, and such ballots shall be in the following form:

"For the issuing of bonds to (Purpose) Yes [ ]."

"For the issuing of bonds to (Purpose) No [ ]."

The election shall be conducted and the votes canvassed, in all respects, as in other township or village elections. Act 5 of 1917, Sec. 3.

115. Issue of Bonds for Free Public Library.—If at such election a majority of such qualified electors present thereat and voting upon said proposition shall vote in favor of such loan, such bonds shall be issued by the township board of the township or the village council or board of trustees of the village, as the case may be, in denominations not exceeding one thousand dollars each, at a rate of interest not exceeding five per centum per annum, and for a period not exceeding twenty-five years, as the said township board, or the said common council, or board of trustees, by resolution, shall direct. Said bond, or bonds, issued by a township board, shall be signed by the members of the said township board and countersigned by the township treasurer, and when issued by a village council shall be signed by the president and clerk of said village and countersigned by the village treasurer. Said bond, or bonds, shall be negotiated by and under the direction of said township board, or common council, or board of trustees of incorporated village, to raise in each year by tax upon the taxable property of such township, or incorporated village, such sums of money as shall be sufficient to pay the amount of said bonds and the interest thereon, as the same shall become due. Act 5 of 1917, Sec. 4.

116. Bonds Not to Be Issued at Less Than Par.—No bonds issued under and by virtue of this act shall be used or negotiated at less than their par value. Act 5 of 1917, Sec. 5.

CHAPTER IX.

BONDS TO PAY ADJUDICATED CLAIMS AND REFUNDING OF TOWNSHIP BONDS.

117. Township Board May Issue Bonds to Pay Judgment.—Any organized township is authorized and empowered to issue bonds upon the faith and credit of such township, and to use or negotiate the same, for the purpose of raising money to pay any claim against such township, which shall have been, or which shall hereafter be placed in judgment in any court of competent jurisdiction in this State, upon the conditions and under the circumstances, and in the manner hereinafter provided. § 2184.

118. Judgment Creditor May Petition for Issuance of Bonds.—Whenever any person or corporation shall have a valid judgment against any organized township, such person or corporation, or his or its duly authorized agent, may present a petition to the township board for such town-

ship, setting forth the facts of the rendition of such judgment, together with a statement of the date and amount thereof and the court in which such judgment was rendered, and shall attach to such petition a duly authenticated copy of such judgment, and thereupon the said township board has the power to provide for the issuing of bonds to be used for the purpose of paying such judgment in the manner hereinafter provided. § 2185.

119. Proposition to Be Submitted to Vote of Electors.—No such bonds shall be issued unless a two-thirds vote of the qualified electors of said township, voting at a township meeting, a general election or a special election duly called to be held at a time to be fixed by said township board, not more than ninety days after said board shall have acted upon the petition mentioned in the preceding section, which election shall be held at the same place as the last preceding township election was held and conducted in the manner hereinafter provided, shall so determine; and the said township boards are hereby authorized and empowered to submit the question of said bonding to the qualified electors of such township, giving due notice thereof by causing the date, place of voting and object of said election to be stated in printed or written notices, to be posted in five public places in said township at least twenty days before the time fixed by said board for such election, which notice must state the amount of money proposed to be raised by such bonding and the purpose or purposes to which it shall be applied. Where it appears by the petition or petitions above mentioned that more than one valid judgment is outstanding against such township, it is competent to provide for the bonding for the payment of such judgments in the aggregate, but in such case the action of the town board in submitting the question of the bonding and in the publication of the notices of election, the question must be so submitted as to cause a vote to be taken upon the proposition to bond for the payment of each of such judgments separately and so that, when the vote shall be cast, each voter shall be privileged to vote for or against the bonding for the payment of any one of the judgments which may be mentioned in such notice. § 2186.

WOMEN VOTERS: At any election at which any question involving the direct expenditure of public money or the issue of bonds, every woman who possesses the qualifications of male electors and has property assessed for taxes, is entitled to vote thereon.

See Sec. 578 of this Guide.

120. Vote to Be by Ballot Furnished by Township Board.—The vote upon such proposition must be by a printed ballot, and in the following words:

"For the issuing of township bonds to pay judgment of ——, Yes." [ ]

"For the issuing of township bonds to pay judgment of ——, No." [ ]

But where the payment of more than one judgment is contemplated, the question as to each judgment must be stated on said ballot in the manner herein provided; and it is the duty of each of such township boards to provide at the polls of such election, during the whole time while the same shall be open, a sufficient number of ballots to supply all the electors desiring to vote thereon. The election shall be conducted, and the votes canvassed in all respects as in other township elections; and immediately upon the conclusion of such canvass, the inspectors of election shall make and sign a certificate, showing the whole number of

votes cast upon such proposition and upon each of them, and the number for and against each of said propositions respectively. § 2187.

121. Inspectors to Endorse and File Certificate of Election.—The inspectors shall endorse upon such certificate a declaration in writing of the result of such election, which certificate and declaration shall then be filed with the clerk of said township, and a copy of said certificate and declaration, certified to by said township clerk, shall be filed by him with the county clerk of the county in which such township is situated. § 2187.

122. Manner of Issuing Bonds.—If such loan is authorized by two-thirds of such electors, said bonds may be issued in such sums not exceeding the amount of the judgment or judgments which said bonds were intended to pay, including interest and costs, and payable at such time and place, not exceeding ten years from the date of such bonds, and with such rate of interest not exceeding six per cent per annum, as the said township board shall by resolution direct. Said bonds shall be signed by the township board, countersigned by the treasurer, and negotiated by and under the direction of said board, and the moneys arising therefrom must be used for the purpose of paying the judgments which have been referred to in the notices of election and the ballots cast at such election, and for no other purpose. No such bonds shall be issued to an amount exceeding three per cent of the assessed valuation of any such township; and no township shall issue a second series of bonds in and by virtue of this act. § 2188.

123. Township Board to Provide for Paying Bonds When Due.—It shall be the duty of the said township board to provide for the raising, by tax upon the taxable property of such township, such sums of money as shall be sufficient to pay the amount of said bonds and the interest thereon, as fast as the same become due. § 2189.

124. Bonds Not to Be Negotiated at Less Than Par.—No bonds issued under and by virtue of this act shall be used or negotiated at less than their par value. § 2190.

125. Township Board May Extend Time of Payment of Bonded Indebtedness.—The township boards of any organized townships in the State of Michigan, at, after or before the maturity of any bonds of said townships, have power to refund and extend the time of payment of such bonds, by retiring and canceling such bonds and issuing in lieu thereof an equal amount of the coupon bonds of any such townships, to be designated as "refunding bonds," which shall state upon their face the purpose for which they were issued, which refunding bonds may be exchanged for such original bonds of equal amount; or such refunding bonds, in the discretion of any such township board, may be sold for cash at not less than their par value, and the proceeds of any such sales shall be applied to paying off, canceling and retiring any such bonds so intended to be refunded, retired and canceled, and for no other purpose. Such bonds may be refunded before their maturity, only when the same can be done with the consent of the holders thereof, at a lower rate of interest than that borne by bonds so refunded. § 2312.

126. Bonds, How Signed, Interest, Etc.—The refunding bonds authorized to be issued by township boards shall be signed by the supervisor

of such township and countersigned by the township clerk. All such refunding bonds shall bear a rate of interest not exceeding six per cent per annum, which may be payable annually or semi-annually, and such interest and the principal of such refunding bonds shall be payable at such place or places as shall be designated by the authority issuing the same, which shall be stated upon the face of the bonds and interest coupons. Such refunding bonds shall be made to become due and payable at such time and times as the authorities so issuing the same shall provide. In no case, however, shall the time be of longer duration than the time for which the bonds were originally issued. § 2313.

127. Boards to Levy Tax for Sinking Fund.—For the purpose of providing for the payment of the several installments of interest that shall accrue upon such refunding bonds and creating a sinking fund for the payment of the principal thereof at maturity, the township boards of such townships shall, at their annual meetings, levy a sufficient tax, in addition to other taxes now authorized by law, upon the real and personal property subject to taxation in such townships, to pay such interest as the same shall become due and to create a sinking fund for the payment of the principal sum of any such refunding bonds so issued at the maturity thereof; and such taxes shall be collected as other taxes are collected, and when so collected shall be applied to the payment of such installments of interest, and to the principal sum of such refunding bonds, as the same shall become due as aforesaid, and to no other purposes. § 2314.

CHAPTER X.

FREE PUBLIC PARKS.

128. Power of Township.—The inhabitants of each organized township * * * shall have power to purchase and hold real and personal estate for the public use of the inhabitants, and to convey, alienate and dispose of the same. § 2047.

PUBLIC USE: Lands for a common or park are for the "public use of the inhabitants." Townships may hold lands for public parks, which are no more foreign to township purposes than to city or village purposes.—Atty. Gen. v. Burrell, 31 / 25.

129. Township May Acquire Territory for Park.—Any township or townships in the State of Michigan, being contiguous or adjacent territory, may acquire by gift or devise a tract of real estate which shall be contiguous or adjacent to the territory acquiring the same for a free public park or resort, and are hereby authorized to hold such real estate in fee simple for such purposes. § 2192.

130. Board of Commissioners.—The supervisor of each of such townships shall comprise a board of commissioners for the control of such park or resort and in case any such supervisor shall decline to act as such commissioner, then the township board shall designate a member of the township board to act as such commissioner. In case there is only one township interested in such park, then the township board shall be the board of commissioners. Such commissioners shall act in that capacity during the term of office to which they were elected respectively in their townships and until their successors are elected and qualified. § 2192.

131. Power of Commissioners.—Such board of commissioners shall have the power to adopt rules and regulations for the maintenance of such park or resort and may make leases for the purposes of erecting cottages and other necessary buildings under such rules and regulations as it deems expedient; but under such lease no spirituous or malt liquors shall be sold on the premises. § 2193.

132. Organization of Board, Bond of Treasurer, Etc.—The board of commissioners shall annually elect one of its members as president. It shall elect a secretary and treasurer, and may appoint such other officers or employes as it may deem necessary. The secretary shall keep a correct record of all the transactions of the board of commissioners, which shall be a public record, and may be inspected at all times by any taxpayer residing in any township owning an interest in any such park or resort as a grantee. The treasurer shall give a bond in the penal sum of six thousand dollars. § 2194.

133. Question to Be Submitted to Electors, Tax Levy, Etc.—Any plan for the securing of such park or resort shall fully set forth the premises which it is intended to occupy as a park or resort, and specify the sum which each of said townships will raise by tax each year for the maintenance and support thereof, which shall not be less than one-tenth of a mill nor more than five mills on the respective valuations of each of said townships. Said moneys so received shall be paid to the treasurer of said board of commissioners, and shall be paid out on orders drawn on him, signed by the chairman and secretary of said board of commissioners. The full proposition shall be submitted to the qualified electors of each township at a regular or special election, and if adopted by a majority vote shall be a binding contract on such township, and, if adopted, shall be recorded in the office of the register of deeds in the county or counties in which said lands shall be situated. The manner of conducting, noticing, canvassing, returning and declaring the result of such election shall, as near as may be, be the same as is now prescribed by the general election law governing elections in said townships for the election of township officers. § 2195.

134. Property Exempt from Taxation.—So much of the estate, both real and personal, as is owned by such township or townships shall be exempt from taxes, but all improvements under lease for private use shall be liable to be taxed. § 2196.

135. Board of Supervisors May Contribute Toward Township Park.—It shall be lawful for and the several boards of supervisors are hereby authorized and empowered to make appropriations by way of contributing toward the improvement and maintenance of any public park owned or held in trust by any township within their respective counties. § 2320.

136. Appropriation Limited to One Thousand Dollars.—All appropriations made by any board of supervisors for the purpose of contributing toward the maintenance of the parks owned or held in trust by the townships in said county or purchased under the provisions of section one of this act (2318) shall not exceed the sum of one thousand dollars in any one year. § 2321.

137. Funds to be Paid to Township Treasurer; Penalty for Misapplication.—Funds appropriated and collected for the purpose of contributing

towards the maintenance of parks owned by townships shall be paid by the county treasurer to the treasurer of the municipality owning such park. Any township misapplying any portion of such funds shall be liable to the county in the full sum so contributed, and for all costs and expenses incidental to the recovery of the same. Any person or official who shall cause or assist in the misapplication of such funds shall be deemed guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, or to imprisonment in the county jail for not more than six months, or to both such fine and imprisonment in the discretion of the court. § 2324.

CHAPTER XI.

GRAND ARMY BUILDINGS AND APPROPRIATIONS FOR MEMORIAL DAY.

138. Leasing of Buildings to Grand Army Posts.—Any town is authorized to lease, for not exceeding five years each, to any post of the Grand Army of the Republic, established in any such town, any public building or part thereof belonging to such town, except schoolhouses in actual use as such, at a nominal rent to be fixed by the township board. § 1040.

139. G. A. R. Post May Unite with Township for Erection of Memorial Building.—In case any Grand Army Post so desires, it may, for the purpose of building any memorial buildings, unite in the erection thereof with any township, to be used jointly for the purposes of the Grand Army and any such township in such manner and form as may be agreed upon. In case of the joint erection of any such memorial building, when any such post or department becomes defunct as a corporation, the building shall belong in perpetuity to the public corporation and its successors, subject to the provisions of law. § 10197.

140. Township Authorized to Unite with Grand Army Post in Erection of Building.—Whenever any township, in which a soldiers' monumental building is proposed to be erected by any post or posts, or the department of Michigan, of the Grand Army of the Republic, desires to unite with such post or department in the erection of such building for township purposes, it can do so, to the same extent as though such buildings were to be used solely for township purposes; and such township is authorized to contract with any such post or department, if the same is incorporated, and thereby determine the proportions that the township shall pay towards the construction of said building, the architecture and arrangement of the same, and the separate portions respectively which shall be occupied or used by the parties to such contract. § 1066.

141. Township Building Committee.—For the purpose of carrying the joint arrangement into effect, the township board is authorized to appoint a board of three trustees, who shall constitute the building committee of said township, under the supervision of the township board, and who shall have power, under such supervision, to make the contracts and oversee, on the part of the township, the work of constructing such building, and shall audit and sign all vouchers on the account of the same. § 1067.

142. How Funds May Be Raised.—The township so uniting in the erection of any such building may raise the funds necessary for the work

in the same manner and to the same extent as is now provided by law for the building of municipal buildings. § 1068.

143. Disposition of Buildings Erected.—Such buildings shall be and remain the property of the municipal corporation after the dissolution of the Grand Army post, but shall be forever dedicated as memorial buildings to the memory of the union soldiers of the war of the rebellion; and all relics, documents, books, papers and library, belonging to such defunct post, or which may be deposited afterwards for such purpose, shall be cared for therein by proper supervision, by the public authorities, in a proper room or rooms kept for that purpose, which shall at all reasonable times be kept open and free to the public. In case any surviving organization of the descendants of such soldiers become and remain an incorporated body, it may, at its option, and said town is hereby authorized and required, if so desired, to permit the said incorporated organization to maintain, so far as possible, the same relations to the municipal corporation, in said buildings, in substantially the same manner and to the same extent, during the life of said corporation or that of any corporation formed as its successor, having the same ends in view, as the posts or department of the Grand Army of the Republic might or could do. The amount of money contributed by said post or department to the construction of said building, upon the dissolution of such post or department, shall be and remain, so long as may be necessary, a perpetual fund devoted to the maintenance of such building as a memorial building. § 1069.

144. Appropriation for Memorial Day.—It is lawful for the township board of any township to appropriate money for the purpose of defraying the expenses of the proper observance of Memorial or Decoration Day. The amount expended in any one year under the provisions of this act shall be limited in any township, having a population of less than five thousand inhabitants, to a sum not exceeding fifty dollars. The sum hereby authorized to be appropriated shall be assessed, levied and collected in the same manner as other expenses of such township are assessed, levied and collected. § 3296.

145. Township Board to Direct Observance of Memorial Day.—The manner and extent of such observance of Memorial or Decoration Day shall be under the direction of the township board of the township, and the expense thereof shall be paid in the same manner as other expenses of such township. § 3297.

CHAPTER XII.

CONSTRUCTION OF INTER-MUNICIPALITY BRIDGE OR ROAD WHEN ONE REFUSES TO JOIN.

146.—Township Board May Apply for Order to Build or Repair Bridge.—Whenever any township, city or such incorporated village as mentioned hereafter in this section, shall be desirous of having a bridge or road constructed, which would, when constructed, be in more than one township, or be partly in one township or more than one, and partly within a city or an incorporated village, or having any such road or bridge rebuilt or repaired, any such township, city or village, shall fail upon request to join in building, rebuilding or repairing such bridge

or road or to contribute its just share to the building, rebuilding or repairing thereof, any such township, city or village desiring the building, rebuilding or repairing of such bridge or road may, by its township board, its common council or village council, as the case may be, by petition, in the form of a resolution or otherwise, apply to the board of supervisors of the county for an order for the construction, rebuilding or repairing of such bridge or road, and for filing the respective proportions which each township, city and village shall contribute for the construction, rebuilding or repairing of such bridge or road and for keeping the same in repair, as well as for deciding the kind of bridge or road to be constructed. § 4441. [See Form No. 7.]

A majority of the board is sufficient to carry a resolution ordering a bridge to be built between adjoining townships.—Horner v. Board of Supervisors, 147 / 581.

147. Notice of Hearing on Petition.—Unless such petition is to be presented to the annual meeting of said board of supervisors, or at an earlier meeting already appointed by the board, to be held at least thirty days prior to such annual meeting, it may contain a request for a special meeting of said board, and may be delivered to the clerk of said board, who shall have authority, and whose duty it shall be, to call a special meeting of said board not more than twenty nor less than ten days from the time he shall receive the petition, and it shall be his duty to inform all the members of said board to be found in the county, of such meeting, and the purpose thereof, at least five days before such meeting is to be held, and at whatever meeting such petition is to be heard, and it shall be the duty of such petitioners to give notice, in writing, to the township board of each township named and to the common council of any city, as well as to the village council of any village named, of their intention to ask for the hearing of the same at such meeting, and of the purpose thereof, which notice shall be delivered to the clerk of every such township, city or village, and if such clerk is not readily found, then to any member of the township board, or the mayor, or some member of the common council of the city, or a member of the village council, as the case may be, at least seven days before said board is to be asked to hear said petition. § 4442. [See Form No. 8.]

148. Determination of Kind and Cost of Bridge Quotas of Expense, Etc.—At such meeting said board of supervisors shall have power, and it shall be their duty, to grant or refuse the prayer of said petition. And if they shall grant the same, they shall describe the kind of bridge or road to be built and the limit of cost which it shall not exceed, and for the purpose of facilitating their determination of the kind and cost of the bridge or road or the building or repairing thereof, each township, city and village named in the petition may present a plan or plans and specifications of such proposed bridge or road or the building or repair thereof, with or without drawings, and an estimate of each as to cost. Said board shall also determine the quota or proportion which each township, city and village named shall contribute thereto, and whether the whole amount shall be raised the first year, or a part, and what part the first and what part the second year, but no part of it shall be deferred more than two years. They shall also determine the quota of each towards keeping the same in repair, which shall remain the same till altered by said board, or by the consent of each township, city and village, which is a party to this proceeding. § 4443.

149. County Treasurer to Open Account with Each Township.—Upon determining that such bridge or road shall be built, rebuilt or repaired, and the other matters mentioned in the preceding sections, then said board of supervisors shall order the county treasurer to open an account with each township, city or village, whose quota they have determined, under the designation of "bridge or road fund" (naming the bridge or road), charging to each the quota so assigned by the board, which order such treasurer shall be bound to obey. § 4444.

150. Assessment and Collection of Tax.—Such board shall thereupon, through their clerk, within five days after such order, serve a copy of the same upon the officer and all officers of each township, city and village authorized by law to assess township taxes in such township, city taxes in such city, and village taxes in such village, as well as upon the clerk of each respectively, and upon the officer or officers in each township, city and village named, authorized by law to collect such township, city or village taxes respectively; and thereupon such assessing officer or officers shall be bound to assess and such collecting officer to collect in such several townships, cities and villages, respectively, the taxes for the same assigned to each respectively as its quota for the year in which by the order of the board, the same is to be raised and this they shall proceed to do without the necessity of waiting any order therefor from any township, city or village authority. But each of said collectors shall, before proceeding to collect any such tax, give to the county treasurer a bond, with at least one good surety, in double of the amount of such tax to be collected by him for the year, and such collectors shall each be entitled to the same percentage or compensation as allowed by law for collecting township, city or village taxes respectively, which may be added to the tax by the collector if not included in the amount assessed. And the board of supervisors shall issue their warrants to each of said collecting officers for the collection of such taxes and require each to pay over the respective amounts to the county treasurer to apply on such bridge or road fund, which warrant shall give to each of said collecting officers the like powers and impose the like duties as are or may be given to or imposed upon those collecting township taxes except as herein otherwise provided. Each of such collectors shall, as required by his warrant, pay over all funds collected, to the county treasurer and take his receipt therefor. § 4444.

151. Contract for Building Bridge or Road.—Said board of supervisors may, as a board or through a committee of three of their members as their agent, at any time after they have made the order for raising such bridge or road fund by taxes as in their opinion the public convenience require, contract for the building, rebuilding or repairing of said bridge or road as an entirety, or for any material or labor for the same if they should prefer to build, rebuild or repair it without contract as a whole (in which case they or their committee may employ an overseer) but in all cases to be payable only out of said bridge or road fund when and as collected. If the building, rebuilding or repairing of the bridge, or road, including materials, is let by contract, notice of not less than three consecutive weeks of the time and place of letting shall be published in some newspaper printed in the county, if any, or if none is published in the county, then by written or printed notice posted for at least three

weeks in three of the most public places in each township, city or village named in the petition, of the time and place at which contract shall be let. The board also, as such, or through its committee of three acting as its agents, shall determine the amount and time when partial payments shall be made when this has not been fixed by special contract, as well as to determine when and whether such bridge or road or the building, rebuilding or repair thereof is completed according to the plan or according to contract. But if the township board of each township and the city or village council of each city or village in behalf of which it was built, shall admit to such board or its said committee and agents, its full completion, this shall be conclusive of the question. § 4445. [See Form No. 9.]

152. Quota to Be Charged to Each Township, Etc.—The board shall cause to be kept by its clerk a full account of all expenses to the county in carrying this act into effect in any such case, and when the bridge or road or the rebuilding or repair thereof is completed, they shall through their clerk, certify such amounts to the county treasurer, who shall charge in the account of such bridge or road fund to each township, city or village, its quota, in the same ratio established by the board for the bridge or road; and this amount together with any balance of the bridge or road fund unpaid shall be raised by tax by the order of the board in each township, city and village named, by tax to be assessed, collected and paid by the same officers and in the same manner as above required for the construction, rebuilding or repairing of said bridge or road. § 4446.

CHAPTER XIII.

TOWNSHIP CONTRIBUTIONS TO FEDERAL AIDED ROADS.

153. Raising of Funds for Building Federal Aided Roads.—Townships, good roads districts and counties are hereby authorized to raise funds, either by general taxation or bond issues, for the building of Federal aided roads and to deposit their portion of the cost of such roads with the State Treasurer to be credited to the specific Federal aid road project for which the money has been appropriated, which funds shall be paid out by the state highway commissioner together with funds appropriated by the state as the work of construction proceeds. Taxes for such purpose may be authorized, spread and collected, and bonds may be issued and sold, in the same manner, and subject to the same limitations and restrictions, as is or may be provided, in act two hundred eighty-three of the Public Acts of nineteen hundred nine, as amended: Provided, however, That in no case shall the furnishing of estimates, plans or specifications by the board of county road commissioners for the construction, maintenance or improvement of a highway hereunder be regarded as necessary: Provided further, That the state highway commissioner shall upon written request by a board of supervisors or by a township board, or at his own option, furnish estimates, plans and specifications for any such improvement. The state treasurer is hereby authorized and directed to open and maintain a separate account with each road project for the purpose of carrying out the provisions of this act. Act 99 of 1917, Sec. 2.

154. Part of Cost Paid by Townships and Method of Computation.—Counties working under the so-called county road system having a valuation per trunk line mile of one hundred thousand dollars and less shall pay twenty-five per cent of the cost of Federal aided roads; counties having a valuation per trunk line mile between one hundred thousand dollars and two hundred thousand dollars shall pay thirty per cent of the cost of federal aided roads; counties having a valuation per trunk line mile between two hundred thousand dollars and three hundred thousand dollars shall pay thirty-five per cent of the cost of federal aided roads; counties having a valuation per trunk line mile between three hundred thousand dollars and four hundred thousand dollars shall pay forty per cent of the cost of federal aided roads; counties having a valuation per trunk line mile between four hundred thousand dollars and five hundred thousand dollars shall pay forty-five per cent of the cost of Federal aided roads; counties having a valuation per trunk line mile of five hundred thousand dollars and upwards shall pay fifty per cent of the cost of Federal aided roads; in each case the state paying the remainder of the cost from the State funds appropriated for this purpose and from such funds as may be allotted to each project by the Federal Government. The cost of surveys and plans shall be paid by the State in accordance with the ruling of the Secretary of Agriculture. The valuation per trunk line mile of any county shall be determined by dividing the latest State equalized valuation by its alloted trunk line mileage, computed on the basis of the number of surveyed townships in each county, under the provisions of Act three hundred thirty-four, Public Acts nineteen hundred thirteen as amended.

Townships and good roads districts shall pay toward the construction of Federal aided roads the same percentages in accordance with their valuation per trunk line mile as shown by the above schedule for counties. The valuation per trunk line mile of a township or good roads district shall be determined by dividing its assessed valuation as shown by the assessment roll of the last preceding year by the actual number of trunk line miles including proposed Federal aided roads within its borders as determined and established by the state highway commissioner under the provisions of Act three hundred thirty-four, Public Acts nineteen hundred thirteen, as amended. Act 99 of 1917, Sec. 3.

For Act 334 of 1913, above referred to, see § § 4851-56, C. L. of 1915.

155. Proceedings Heretofore Taken Declared Void.—All proceedings heretofore taken in any township, good roads district or county of the State for the purpose of raising money by taxation or by loan for the construction, maintenance or improvement of Federal aided roads in accordance with the provisions of this act, are hereby declared to be as legal and valid as though the same were taken subsequent to the time that this measure becomes operative; and any and all bonds heretofore issued for such purpose and in accordance with this act shall be deemed to be valid subsisting obligations of the township, good roads district or county, as the case may be, as though authorized, issued and sold hereunder. Any and all moneys so raised and in the possession of the township, district or county shall be deposited by the officials having control thereof with the state treasurer as herein provided. Act 99 of 1918, Sec. 4.

156. Township Tax to Pay Share of Cost.—Townships, good roads districts and counties in which Federal aided roads shall be built are hereby required to levy annually and raise by general taxation a sum equal to three per cent of the amount which said township, good roads district or county may have contributed toward the cost of building said Federal aided roads, up to but not exceeding one hundred dollars a mile per year.

It shall be the duty of the township board, in case such road is a township road, and said board is hereby authorized, to order such amount to be raised. In the event that such road is constructed, maintained or improved for a good roads district or a county, it shall be the duty of the board of supervisors to order spread the amount contemplated by the provisions of this section.

The moneys so collected shall be paid into the state treasury not later than the last day of March of each calendar year, and credited to the maintenance fund for each specific Federal aided road project for which the money was raised, to be paid out by the state highway commissioner, who is hereby authorized to maintain all Federal aided roads in accordance with the directions of the Secretary of Agriculture, under the provisions of Federal aid road act herein referred to and any amendments to the same that may hereafter be made. The remaining portion of the cost of maintaining Federal aided roads shall be paid out of any State highway funds not otherwise appropriated.

The state treasurer is hereby authorized and directed to open and keep a separate maintenance account with each road project for the purpose of carrying out the provisions of this act. Act 99 of 1917, Sec. 5.

157. Township May Contract with State Highway Commissioner.—Any township, good roads district or county which has raised funds for building roads under the provisions of this act, may contract with the state highway commissioner at a price below that of the lowest responsible bidder and build or maintain the roads within its jurisdiction under the supervision of the State highway commissioner providing no satisfactory bid is received for building or maintaining the roads and all other bids are rejected.—Act 99 of 1917, Sec. 6.

CHAPTER XIV.

PUBLIC RECREATION AND PLAYGROUNDS.

158. Township May Operate Recreation System.—Any city, village county or township may operate a system of public recreation and playgrounds; acquire, equip and maintain land, buildings or other recreational facilities; employ a superintendent of recreation and assistants; vote and expend funds for the operation of such system. Act 156 of 1917, Sec. 1.

159. How Recreation System May be Operated.—Any city, village, county, township or school district may operate such a system independently or they may co-operate in its conduct in any manner in which they may mutually agree; or they may delegate the operation of the system to a recreation board created by any or all of them, and appropriate money, voted for this purpose, to such board. Act 156 of 1917, Sec. 3.

160. **Property on Which Recreation System May be Operated.**—Any municipal corporation or board given charge of the recreation system is authorized to conduct its activities on (1) property under its custody and management: (2) other public property, under the custody of other municipal corporations or boards, with the consent of such corporations or boards; (3) private property, with the consent of the owners. Act 156 of 1917, Sec. 4.

PART II.

TOWNSHIP MEETINGS.

CHAPTER I.—Annual and Special Meetings.
CHAPTER II.—Business Other Than Election of Officers by Ballot.

CHAPTER I.

ANNUAL AND SPECIAL MEETINGS, OFFICERS TO BE ELECTED, ETC.

161. Annual Town Meeting Held in April.—The annual meeting of each township shall be held on the first Monday of April in each year. § 2054.

ANNUAL MEETINGS: Annual meetings and general elections distinguished.—People v. Knight, 13 / 424.
The words "annual meeting," when applied to townships, shall be construed to mean the annual meeting required by law to be held in the month of April.—C. L. 1915, § 64, Subd. 4.

162. Constitutional Provisions.—The constitutional provisions for the election of officers at township meetings are compiled under the head of "Township Officers," Section 231 of this Guide.

163. Officers to be Elected at Annual Meeting.—At such meeting there shall be an election for the following officers: One supervisor, one township clerk, one treasurer, one commissioner of highways, as many overseers of highways as shall be provided for by law, so many justices of the peace as there are by law to be elected in the township, and so many constables as are to be elected, not exceeding four in number. § 2054.

164. What Officers to be Chosen by Ballot.—Each of the officers named in the last preceding section shall be chosen by ballot. § 2055.

OVERSEERS: See the next section, and also Sec. 197 of this Guide.

165. Manner of Electing Overseers of Highways.—There shall also be elected at such meeting to be chosen viva voce, or in such manner as the meeting may direct, one overseer of highways for each road district, and no elector except a resident of the district where the overseer is chosen, or an elector of the township having taxable property in such district, shall vote for said overseer, and as many poundmasters as the meeting may direct: Provided, If there shall be but one road district in the township the overseer of highways for that district shall be elected by ballot in the same manner as other township officers are elected: Provided further, That the township board may, by resolution, direct that all overseers of highways in any township shall be elected, in their respective districts, by ballot in the same manner as other township officers are elected. No person shall be eligible to the office of overseer of highways who is not a resident taxpayer in the district for which he is elected or appointed, and no person shall hold the office of commissioner and overseer at the same time. § 4482. As Am. by Act 212 of 1917.

SIMILAR PROVISIONS: See also § § 2056 and 4612, C. L. of 1915.

166. Election of Poundmasters.—There shall also be elected at such meeting, to be chosen viva voce, or in such manner as the meeting may direct, as many poundmasters as the meeting may direct. § 2056.

167. Member of Board of Review to be Elected at Annual Township Meeting.—Annually, at the township meeting, one member of the board of review, shall be elected for two years. See Sec. 793 of this Guide.

168. Place of Holding Township Meeting.—The annual and special township meetings shall severally be held at the place in the township where the last annual township meeting was held, or at such other place therein as shall have been ordered at a previous meeting, or when there has been no such previous meeting, at such place as shall be directed in the act or proceedings by which the township was organized, unless it shall, in either case, become inconvenient to do so. § 2065.

As to annual meetings outside of township, see People v. Knight, 13 / 424.

169. Place of Meeting may be Changed and Meeting Adjourned—Whenever it shall become inconvenient to hold a township meeting at the place designated therefor, the board of inspectors, or a majority of them, after having assembled at, or as near as practicable to such place, and opened the meeting, and, before receiving any votes, may adjourn said meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting. § 2066.

170. Proceedings on Adjournment of Township Meeting.—Upon adjournment any township meeting, as provided in the last section, the board of inspectors shall cause proclamation thereof to be made and shall leave a constable or some other proper person at the place where such meeting was opened, to notify all persons arriving at such place that the meeting has been adjourned, and the place to which it has been adjourned. § 2067.

171. Purposes for Which Township Meeting May Adjourn.—Any annual or special meeting may, by a vote of the meeting, be adjourned to any other day and from time to time, for the purpose of transacting any proper business of the township, except for the election of officers. § 2068.

172. First Town Meeting in New Township.—The provisions of law relating to the time of and the manner of conducting the first township meeting in any township and to proceedings in case of failure to hold such first meeting, have been compiled under the head of "Organization of New Townships," Chap. II of Part I of this Guide.

173. When Special Meeting May be Held to Fill Vacancies.—Special township meetings may be held for the purpose of choosing officers to fill any vacancy that may occur, if the township board shall deem it expedient, and make their order therefor; and in case the said township board become disorganized, or reduced below the number of a quorum, as provided by law, by, or through the death or removal of the officers composing the same, or from any other cause, then such special township meeting may be called and proceeded in, in all respects, as in the case of newly organized townships. § 2073.

VACANCIES: Act 203 of 1917, Chap. IV, Sec. 6, provides that vacancies in township office, except the office of justice of the peace, shall be filled by appointment; and that a vacancy in the office of justice shall be filled at the next annual township meeting. See Sec. 404 of this Guide.

174. When Special Meetings May be Held for Other Purposes.—Special township meetings shall also be held, for the purpose of transacting any other lawful business, when ordered by the township board, on a request to them in writing, signed by any twelve electors of the township, specifying therein the purposes for which such meeting is to be held; and the mode of proceeding at all special meetings is the same as at the annual meeting. § 2074.

RECORD: The record of a special township meeting, voting a tax or authorizing moneys to be raised to be paid by tax, must show that all the statutory preliminary requirements to a legal meeting had been complied with and the holding of the meeting and the proceedings had.—Taymouth v. Koehler, 35 / 22; Loomis v. Rogers Twp., 53 / 135, 142.

175. What Order for Special Meeting to Specify.—Every order for a special township meeting must specify the purpose for which it is to be held, and the time when, and the place where it shall be held; and if any vacancies in office are to be filled at such meeting, such order must state in what offices vacancies exist, how they occurred, and who were the last incumbents, and if the vacancy be in the office of justice of the peace, such order must also state at what time the constitutional term of office will expire. § 2075.

RECORD: The record must show all statutory requirements to have been complied with.—Loomis v. Roger Twp., 53 / 135, 142.

176. Within what Time Special Meeting to be Held.—The time appointed for holding any special township meeting shall not be more than twenty nor less than fifteen days from the time of making the order therefor; and such order shall be left with the township clerk within two days after the making thereof, and shall be recorded in his office. § 2076.

SPECIAL STATUTE: Where a statute authorizes a special meeting for a particular purpose, upon a notice of less than fifteen days, it supersedes for that occasion and for that purpose, the general requirement as to time, provided in this section.—Miller v. Grandy, 13 / 540.

177. Clerk to Give Notice of Special Meeting.—The said clerk shall, within two days after such order shall be left with him, cause copies thereof to be posted up in three of the most public places in the township; and if there be a newspaper printed in such township, he shall also cause a copy to be published therein, if practicable, at least five days before the day appointed for such special meeting. § 2077.

178. Notice of Annual Meeting Not Necessary.—No notice of the annual township meetings shall hereafter be necessary. § 2078.

179. Inspectors to be Same as at General Elections.—At the election of officers required to be chosen by ballot at the annual township meeting, the inspectors of election shall be the same as at the general election. § 2079. See Sec. 431 of this Guide.

By Act 203 of 1917, the Michigan Election Law, nearly all the provisions applicable to general elections were made to apply to elections at township meetings, but the inspectors of election remain the same. For manner of conducting township meetings where the township is divided into election districts see Sec. 198 of this Guide.

180. Minutes of Proceedings, Poll List, Etc.—The township clerk shall be the clerk of the township meeting, and shall keep faithful minutes of its proceedings, and a correct list of the persons voting at the election; and he shall enter at length in his minutes every order or direction, and all rules and regulations made by such meeting. § 2080.

At every election two poll lists shall be kept, each by a clerk or inspector of election. Each such clerk or inspector shall enter upon the poll list kept by him the names of all electors who are given official ballots, and shall, at the time of entering each such name, place on the same line, and immediately following said name, the number of the ballot or ballots given such elector. The names of electors shall be entered on the poll lists in the order in which such electors are given ballots: Provided, That the name of an absent voter and the number of his ballot shall be entered on the poll lists at the time his marked ballot or ballots are taken by the inspector from the sealed envelope, as provided by law. Act 203 of 1917, Chap. X, Sec. 9.

At every general, special, township, and charter election in this State, it shall be the duty of the inspectors of election of each voting precinct, to cause to be numbered in figures, and in numerical order, the name of every person entered upon the poll lists required by law to be kept at such election; which figures shall be placed against the names on such poll lists at the time of the entry of said names thereon. § § 2080, 3813.

Town meeting records should not be technically construed for the purpose of defeating proper action thereon; and where the law requires a majority vote of all electors present, it seems to be a sufficient record to state that "it was resolved," etc., without adding that it was by the affirmative vote of a majority of competent voters.—Lake Sup. Ship Canal Co. v. Thompson, 56 / 493. The general highway law, § 4615, provides that the highway commissioners shall annually report to the township board an estimate of the amount of highway labor that should be assessed on each hundred dollars of valuation for the year, and also the money tax to be levied on the same basis according to the assessment roll of the preceding year. The township meeting determines, on this report, what amount shall be levied. (§ 4616.) It seems that it is not essential that the record of the town meeting shall state in terms that the respective amounts were assessed as the statute requires; it is enough if it appears by reference to the report of the commissioner, which, if not in evidence, is assumed to have been in due form (§ 4616).

181. Clerk to Keep Record of Town Meeting.—He (i. e., the township clerk) shall transcribe in the book of records of his township the minutes of the proceedings of every township meeting held therein, and he shall enter in such book every order or direction, and all rules and regulations made by any such meeting. § 2118.

Harding v. Bader, 75 / 318.

182. When Clerk to be Appointed by Inspectors, Etc.—If the township clerk be absent, then such person as shall be appointed by the inspectors for that purpose shall act as clerk of the meeting, first taking an oath to be administered by one of the inspectors, that he will faithfully perform the duties of his office according to the best of his ability. § 2081.

183. Ballots to be Deposited in Box.—When the election is by ballot, the inspectors shall deposit the ballots in a box, to be constructed, kept and disposed of, as near as may be, in the manner prescribed in Chapter 5. § 2083.

Chapter 5 referred to is R. S. '46, which is superseded by Act. 203 of 1917, the Michigan Election Law. See Sec. 477 of this Guide.

184. Opening and Closing of Polls.—On the day of any election the polls shall be opened at seven o'clock in the forenoon, or as soon thereafter as may be, and shall be continued open until five o'clock in the afternoon and no longer: Provided, That in townships the board of inspectors of election may, in its discretion, adjourn the polls at twelve o'clock noon, for one hour, and that the township board in townships

and legislative body in cities and villages may, by resolution adopted fifteen days prior to the election and published with the notice of the election, provide that the polls shall be kept open until eight o'clock in the evening of the same day and no longer. Act 203 of 1917, Chap. X, Sec. 1.

The inspectors of election shall cause proclamation to be made upon opening the polls, and shall cause proclamation to be made of the closing of the polls one hour, thirty minutes and fifteen minutes, respectively, before closing thereof. Id., Chap. X, Sec. 2.

185. Ballots, What to Contain, Etc.—The ballot shall be a paper ticket, with the names of the persons for whom the elector intends to vote, written or printed, or partly written and partly printed thereon; and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names as designated to any office, than there are persons to be chosen at such election to fill such office, and each ballot shall be so folded as to conceal the contents, and shall be delivered to one of the inspectors. § 2084.

186. Designation on Ballot of Persons to Fill Vacancy.—If at any election there shall be one or more vacancies to be supplied, in the office of justice of the peace, school inspectors, or commissioners of highways, and at the same election, any such officer is to be elected for the full term, it shall be necessary to designate on the ballot the person or persons voted for to supply such vacancy or vacancies. § 2085.

The office of school inspector is now obsolete.

187. Challenges.—If any person offering to vote at such election, or upon any question arising at such township meeting, shall be challenged as unqualified by any inspector, or any elector entitled to vote at such meeting, the inspectors shall proceed thereupon in the manner prescribed in Chapter 5, in case of a challenge at the general election; and no person whose vote shall have been received upon such challenge, shall be again challenged upon any other question, arising at the same township meeting. § 2086.

Chapter 5, above referred to, is R. S. '46, which is superseded by Act 203 of 1917, the Michigan Election Law. As to challenging electors, see Secs. 472 and 473 of this Guide.

188. Authority of Inspectors to Preserve Order.—The inspectors or officers presiding shall have the same authority to preserve order, to enforce obedience, and to commit for disorderly conduct, as is possessed by the board of inspectors at a general election. § 2087. See also Sec. 436 of this Guide.

189.—Proceedings at the Polls.—The proceedings at township elections, as to the preparation of ballots, their reception and deposit in the ballot boxes, and the challenge of voters, are now regulated by the general election law. See Chap. IX of Part V, being Secs. 438 to 465 of this Guide.

190. Canvass of Votes and Proclamation of Result.—The votes given by ballot shall be publicly canvassed by the inspectors, at the place where the meeting was held, and the result shall be read by the clerk to the persons there assembled; and such reading shall be sufficient notice to all

persons elected at that election to any office, whose names are on the poll list as voters. § 2090.

No person can be declared elected, unless he has received more votes than any other person, notwithstanding the party for whom the greater number was cast may not be in existence, or may be ineligible.—Crawford v. Molitor, 23 / 341. The only way to try titles to office finally and conclusively is by quo warranto.—Frey v. Michie, 68 / 323.
See Secs. 525 to 534 of this Guide as to canvass of votes and Sec. 239 as to notice.

191. Ballots to be Counted and Compared with Poll Lists.—Before the ballots are opened, they shall be counted and compared with the poll list, and the like proceedings shall be had as to ballots folded together, and as to differences in number, as are prescribed in Chapter V. § 2091. See note under Section 179 of this Guide.

192. Inspector to Make Statement of Result.—The canvass being completed, and the result ascertained, the inspectors shall draw up a statement in writing, setting forth, in words at full length, the whole number of votes given for each office, the names of the persons for whom such votes for each office were given, and the number of votes so given to each person, which statement shall be certified under the hands of the inspectors to be correct. § 2092.

193.—Statement to be Certified and Recorded.—The inspectors shall also certify upon such statement, their determination of the persons elected to the respective offices, including as well those elected without ballot, as those elected by ballot; which statement and certificate of determination shall be left with the township clerk, and recorded in his office. § 2093.

CERTIFICATE: The board of supervisors cannot go behind this certificate and determine a contested election of a supervisor.—Robinson v. Suprs., 49 / 321.

194. Who Deemed Elected; Choice by Lot.—The persons having received the greatest number of votes given for any office at such election, shall be deemed and declared duly elected; and if two or more persons shall have received an equal number of votes for the same office, the inspectors of election shall determine the choice by lot, and shall declare and certify the same accordingly. § 2094. [Form No. 10.]

A candidate to be elected must receive more votes than are cast for any other person. This section does not, under any circumstances, allow a minority candidate to be deemed elected.—People v. Molitor, 23 / 341.

195.—Who May Vote at Town Meeting.—Each inhabitant of any township, having the qualifications of an elector, as specified in the constitution of this State, and no other person shall have the right to vote on all matters and questions before any township meeting, and when any person claiming the right to vote shall be challenged by a voter, the moderator shall proceed in the same manner as on challenges at the election of township officers. § 2161. See Sections 187 and 471 of this Guide.

196.—Who Eligible to Office.—No person except a citizen of the United States and an elector as aforesaid shall be eligible to any elective office contemplated in this chapter. § 2162.

197. Proceedings When Township is Divided into Election Districts.—When a township has been divided into election districts, the electors of each election district shall meet at one o'clock in the afternoon at the polling place of each district respectively to transact such business as is usually transacted at township meetings by viva voce vote, and shall

count or canvass the votes on each and every question which shall be submitted to them and the result of such vote shall be counted and reported to the board of inspectors of election of precinct number one, and shall be by them consolidated and canvassed in the same manner as provided for the preparation of the official canvass. But all questions proposed to be acted upon must be previously reported to the township board and by them reported to the board of inspectors of election of each precinct on the morning of election, and that no question can be entertained that is not so reported. § 3649.

The provisions of this section for consolidating the reports of district inspectors is superseded, so far as relates to the manner of the return by inspectors, by the election law of 1891.—Belknap v. State Canvassers, 95 / 155. See also Aud. Gen. v. Ry. Co., 116 / 122, 125

ELECTION DISTRICTS: For provisions of law relating to the division of townships into election precincts, see Secs. 408 to 414 of this Guide.

198. Who May Vote at Township Meeting.—Each inhabitant of any township, having the qualifications of an elector, as specified in the constitution of this State, and no other person, has a right to vote on all matters and questions before any township meeting; and when any person claiming the right to vote is challenged by a voter, the moderator must proceed in the same manner as on challenges at general elections. § 2161.

CHAPTER II.

BUSINESS OF TOWN MEETINGS OTHER THAN ELECTION OF OFFICERS BY BALLOT.

199. When Such Business Shall Be Transacted.—At the hours of one o'clock in the afternoon, there shall be elected the other officers to be elected at such meetings and all business of such meetings requiring a viva voce vote, except that required by Section eight of this Chapter (Sec. 198 of this Guide) shall be then transacted: Provided, That on all votes for the appropriation of any moneys, or for the raising of any taxes in said township, said votes shall be taken in such a manner that the moderator of such meeting may be able, and shall, upon demand, state the result of each of said votes, giving the number voting for and the number voting against each proposition so voted upon, all of which shall be duly recorded by the township clerk in the records of the proceedings of such meeting. § 2088.

200. Township Meeting May Vote Tax for Library.—The qualified voters of each township shall have power, at any annual township meeting, to vote a tax for the support of libraries established in accordance with the provisions of the General School Law, (§ § 5740-42, C. L. of 1915). § 5751. See Sections 96 to 99 of this Guide.

201. Electors May Designate Site for Pound.—Each township may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats, and neat cattle may be restrained and kept from going at large contrary to law, or to any by-law of such township. § 2229. See, also, Secs. 11 and 12 of this Guide.

202. Determination of Questions Upon Motions.—All questions upon motions made at township meetings shall be determined by a majority of the electors voting; and the officer presiding at such meeting shall ascertain and declare the result of the votes upon each question. § 2089.

203. Who to be Moderator of Township Meeting.—In the transaction of any business other than the election of officers in any township meeting, the supervisor, if present, shall be the moderator of the meeting; and, if he shall not be present, any other of the inspectors of election, except the clerk, who shall be designated by the inspectors present, shall be the moderator; or the meeting, under the direction of the inspectors present, may elect viva voce, a moderator of the meeting. § 2156.

204. Powers and Duties of Moderator.—The moderator shall preside in and regulate the proceedings of the meeting; he shall decide all questions of order, and make public declaration of all votes passed; and when any vote so declared by him shall, immediately upon such declaration, be questioned by seven or more of the voters, he shall make the vote certain by polling the voters, or dividing the meeting, unless the township shall, by a previous vote, or by their by-laws, have otherwise provided. No person shall address the meeting before permission is obtained of the moderator, nor while any other person is speaking by his permission; and all persons at such meeting shall be silent at the request of the moderator. § § 2157-58.

205. Power of Moderator in Case of Disorderly Conduct.—If, at any township meeting, any person shall conduct himself in a disorderly manner, and, after notice from the moderator, shall persist therein, the moderator may order him to withdraw from the meeting; and, on his refusal, may order the constables, or any other persons, to take him into custody until the meeting be adjourned. § 2159. See, also, Secs. 188 and 436 of this Guide.

206. Penalty for Disregarding Order of Moderator.—Any person who shall refuse to withdraw from such meeting, on being ordered by the moderator to do so, as provided in the preceding section, shall, for every such offense, forfeit a sum not exceeding twenty dollars. § 2160.

207. Clerk to Keep Record of all Proceedings of Township Meetings.—The township clerk shall transcribe in the book of records of his township the minutes of the proceedings of every township meeting held therein, and he shall enter in such book every order or direction, and all rules and regulations made by any such township meeting. § 2118.

RECORD: A township record, showing a vote of highway and contingent taxes upon the day of the annual township meeting, sufficiently shows that the action taken was that of the electors, and will be presumed that it was taken at the time provided by the statute.—Aud. Gen. v. Longyear, 110 / 223.

See, also, Sec. 180 and notes, and Secs. 197 and 202 of this Chapter.

208. Meeting May Vote Money for All Proper Charges and Expenses.—The inhabitants of any township shall have the power at any legal meeting, by a vote of the qualified electors thereof, to grant and vote sums of money, not exceeding such amounts as are or may be limited by law as they shall deem necessary for defraying all proper charges and expenses arising in such township, but they shall not vote or raise by tax in any one year for contingent or ordinary expenses of the township to exceed the sum of two thousand dollars, except in townships where there are ten or more election precincts, and then a sum not to exceed five thousand dollars. No money shall be raised by tax on the property of the township in excess of five thousand dollars in any one year for township purposes, except such as shall be voted for specific purposes, to

be set forth and entered upon the records of the township, and all moneys so raised shall constitute a fund for the purpose or purposes so expressed, and shall not be applied to any other purposes. § 2048.

VOTING MONEY: The inhabitants of a township cannot vote money for any purpose not authorized by law.—Miller v. Grandy, 13 / 540; People v. Blackman Twp., 14 / 336. See also People v. Twp. Bd., 14 / 28; Buhl v. Twp. Bd., 14 / 398; Atty. Gen. v. Bay Co. Suprs., 34 / 46. A special act to authorize the reimbursement of a township treasurer for township funds stolen from him and made good by him, held unconstitutional.—Bristol v. Johnson, 34 / 123. The inhabitants cannot by vote audit accounts.—People v. Onondaga, 16 / 254; Bristol v. Johnson, 34 / 123. Sufficiency of record, of vote to raise money.—Aud. Gen. v. Longyear, 110 / 223.

CHARGES AND EXPENSES: As to "township charges," see Marathon v. Oregon, 8 / 381. The term "township expenses" is usually applied to the ordinary expenses of township government, and as commonly used would not cover many sums which it might be proper and even necessary that the township should raise for local purposes.—Upton v. Kennedy, 36 / 215, 220. As to voting money for "contingent expenses," see Tweed v. Metcalf, 4 / 579, 592. The ordinary expenses of a township do not include those incurred in building a town hall.—Mills v. Richland Twp., 72 / 100, 108.

In case the township neglects or refuses to vote the money necessary for the ordinary expenses, the township board is authorized to vote such money. See Sec. 688 of this Guide, and notes.

209. **Unauthorized Debt or Liability Not to be Created.**—No board, officer or officers shall create any debt or liability against the township, or issue any warrant, certificate or order for the payment of money, except when the creation of such debt or liability or the payment of such money has been authorized by such vote or by the provisions of law. § 2048.

210. **Meeting May Make By-Laws for Restraining Animals and for Managing Township Affairs.**—The inhabitants of each township, may at any legal meeting, by a vote of the qualified electors thereof, make all such orders and by-laws for determining the time and manner in which cattle, horses, swine, sheep and other animals shall be restrained from going at large in the highways, and for directing and managing the prudential affairs of the township, as they shall judge most conducive to the peace, welfare and good order thereof. They may annex to such orders and by-laws suitable penalties not exceeding ten dollars for any one breach thereof, to be recovered by complaint before any justice of the peace of the township or county where the offense shall have been committed. § 2050-51.

NOTE: The act granting to boards of supervisors certain powers relating to animals running at large, provides that these powers of the township shall not be abridged.

HIGHWAYS: This section has reference only to public highways and cannot be construed to include railroads. A vote making such animals "free commoners" cannot authorize trespass on vested private rights.—Williams v. M. C. R. R. Co., 2 / 259, 262. Nor is the common-law liability of owners of such animals for trespass on the lands of others abrogated.—Johnson v. Wing, 3 / 163; Wood v. La Rue, 9 / 158; Aylesworth v. Herrington, 17 / 417.

211. **By-Laws Shall be Published.**—The by-laws of any township shall, before the same shall take effect, be published, by posting up copies thereof in three of the most public places in the township; and such by-laws, duly made and published, shall be binding upon all persons coming within the limits of the township, as well as upon the inhabitants thereof. § 2052.

212. **Amount of Road Repair and Highway Improvement Taxes.**—The highways in every organized township in this State shall be laid out, improved and maintained by two money taxes; one tax shall be known as the road repair tax, and shall be assessed on all property in the township outside of the limits of incorporated villages, which tax shall not exceed fifty cents on each one hundred dollars valuation according to the assessment roll of the last preceding year, except in townships with an

assessed valuation of less than five hundred thousand dollars where the tax shall not exceed one dollar on each one hundred dollars valuation, according to the assessment roll of the last preceding year; and the other tax shall be known as the highway improvement tax and shall be assessed on all taxable property in the township, including that within the limits of incorporated villages, which tax shall not exceed fifty cents on each one hundred dollars valuation, according to the assessment roll for the last preceding year, except in townships with an assessed valuation of less than five hundred thousand dollars where the tax shall not exceed one dollar on each one hundred dollars valuation, according to the assessment roll of the last preceding year. § 4318. As Am. by Act 45 of 1917.

213. Board to Present Commissioner's Statement to Annual Meeting.—The township board shall cause such statement to be presented at the next annual township meeting, but a failure to render such statement or to present the same to the township meeting shall not affect the right of the electors of the township to vote at such meeting the amount of road repair tax and road improvement tax to be assessed, or of the township board and commissioner to fix and determine the same, as provided elsewhere in this act. § 4320.

HIGHWAY TAXES: The labor and money tax which the electors of a township are authorized to vote is not intended to meet anything but the ordinary improvement of the highways and bridges of the township during the year.—Longyear v. Aud. Gen., 72 / 415; Michigan Land and Iron Co. v. L'Anse Township, 63 / 700.

The failure of the commissioner of highways to estimate and report the amount of money to be raised for highway purposes will not deprive the electors of the right to vote upon that question.—Turnbull v. Township of Alpena, 74 / 621. For amount of tax to be voted as authorized by statute, see Peninsular Sav. Bank v. Ward, 118 / 872.

Neglect of electors to vote a money tax for highway purposes.—Thayer Lumber Co., v. Springfield Twp., 131 / 15. See McFarlan v. Cedar Creek Twp., 93 / 558.

214. Meeting Shall Determine Amount of Road Repair and Highway Improvement Taxes.—At the annual township meeting held in each organized township the electors shall, by a majority of those present and voting, who do not reside in any incorporated village, determine the amount of road repair tax to be raised for the ensuing year, and at the said meeting the electors shall also, by a majority of all those present and voting, including residents of incorporated villages in such organized township, determine the amount of highway improvement tax to be raised for the ensuing year. § 4321.

215. Action by Board and Commissioner if Electors Neglect or Refuse to Vote Taxes.—If the electors present at any annual township meeting shall neglect or refuse to vote any road repair tax or highway improvement tax, the township board and the township highway commissioner, acting jointly, shall order to be levied such a sum or sums, for either or both of these funds, as may appear to them necessary and advisable, not to exceed the amounts named in section one of this chapter. § 4322. For Sec. 1 referred to, see Sec. 211 of this Guide. [See Form No. 11.]

TAX LEVY: Where the township board imposes a highway tax they represent the town meeting in doing so and are confined to the same subjects of taxation.—Ryerson v. Township of Laketon, 52 / 510.

The records of the board must affirmatively show neglect or refusal of the voters to vote a sufficient sum for township expenses.—Harding v. Bader, 75 / 316; Gamble v. Aud. Gen., 78 / 302; Aud. Gen. v. D., S. S. & A. R. Co., 116 / 122; Aud. Gen. v. Sparrow, 122 / 593. See also Thayer Lumber Co. v. Springfield Twp., 131 / 13.

Where the township board in levying highway taxes, exempts the property in a particular village in the township, the levy is void.—Aud. Gen. v. D., S. S. & A. R. Co., 116 / 122. See Perrizo v. Stephenson Twp., 141 / 167.

216. Meeting May Regulate Storing of Gunpowder.—The inhabitants of every township may, at any regular meeting, order that no gunpowder

shall be kept in any place within the limits of such township, unless the same shall be kept in tight casks or canisters; and that no gunpowder, above the quantity of fifty pounds, shall be kept or deposited in any shop, store, or other building, or in any ship or vessel, which shall be within the distance of twenty-five rods from any other building, or from any wharf; that no gunpowder, above the quantity of twenty-five pounds, shall be kept or deposited in any shop, store, or other building, within ten rods of any other building; and that no gunpowder, above the quantity of one pound, shall be kept or deposited in any shop, store, or other building, within ten rods of any other building, unless the same shall be well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers. § 3478.

POLICE POWER: When the public safety requires it, the legislature has power to impose burdens to secure immunity from danger, under the general police power, and it is customary to delegate the power in proper cases to municipal corporations.—Saginaw City v. Electric Light Co., 113 / 662.

217. Inoculation of Inhabitants with Cow-Pox.—Every township may, at any meeting, make suitable provision for the inoculation of the inhabitants thereof with the cow-pox, under the direction of the board of health, or the health officer of the township, and shall raise all necessary sums of money to defray the expenses of such inoculation, in the same manner that other township charges are defrayed. §5086.

218. Meeting May Require Reading of Audited Accounts.—All accounts audited by the township board shall be preserved by the clerk and be produced at the next annual township meeting and there read by him, if the same be required by the meeting. § 2127.

219. Estimates for Support of the Poor.—In those counties where the townships are liable for the support of their poor, the annual accounts thereof and estimates for deficiency and support for ensuing year are to be presented at the annual township meeting. See Sec. 1199 of this Guide.

220. Meeting May Vote Money for Support of Township Poor.—The inhabitants of such township shall thereupon, by a vote of a majority of the persons qualified to choose township officers, determine upon the sums of money which shall be assessed upon the said township the ensuing year for the purpose aforesaid. The sum so voted, when raised and collected, shall be paid into the township treasury, subject to the order of the township board. § § 5251-52.

221. Raising Money to Perpetuate Section Corners, Etc.—The boards of supervisors of the several counties in this State are authorized to establish and perpetuate any government section corners or quarter posts in their respective counties, which they may have good reason to believe are lost, or are in danger of being lost, by the employment of a surveyor therefor, who shall keep a full and complete record of his work, giving in detail the evidences by which any corner is identified, also the manner in which any lost corner is identified, also the manner in which lost corners are reëstablished; which record shall be kept in the same book provided by the county for surveyor's records, and kept in the office of the county surveyor, and the record so made and entered by the surveyor aforesaid shall be received as evidence in all the courts of this State,

wherein any question may arise as to the establishment or identification of such corner or corners. But such work shall be done only in such townships where a majority of the voters, voting, shall vote to raise such sum as is required, not exceeding two hundred and fifty dollars for any one township of thirty-six sections, or in that proportion for townships of greater or lesser size, for such work by any surveyor authorized to do such work, as herein provided; and nothing in this act shall apply to lands where section and quarter section lines are already properly established. Such sum to be assessed upon the real estate of such township, according to its cash value. Such assessment to be levied, and the taxes therefrom collected in the same manner as other assessments and collection of taxes are made. § 2329.

CONSTRUED: This work must be authorized by a vote of the electors.—Mills v. Richland Twp., 72 / 100.

As to surveys and resurveys, see Hess v. Myers, 73 / 259. Purchasers of town lots have a right to locate them according to the stakes which they find planted and recognized, and no subsequent survey can be allowed to unsettle their lines.—Flynn v. Glenny, 51 / 580, 584.

222. Meeting May Make By-Laws Relating to Dogs.—The inhabitants of any township may make such by-laws concerning the licensing, regulating, and restraining of dogs going at large, as they shall deem expedient, and may affix any penalties not exceeding ten dollars for any breach thereof; but no such by-laws shall extend to any dog not owned or kept in such township, and no person shall be obliged to pay more than two dollars annually for any license granted under the provisions of this chapter. § 7267.

NOTE: The chapter referred to is Chapter 49 of the Revised Statutes of 1846, relating to certain municipal police regulations.

See also Secs. 1319 to 1322 of this Guide, relative to dog tax.

223. Township May Be Authorized to Borrow or Raise Money for Roads or Bridges.—The board of supervisors has power to authorize any township or townships in their respective counties, by a vote of the electors of said township or townships, to borrow or raise by tax upon such township, any sum of money not exceeding ten thousand dollars in any township in any one year, to build or repair any roads or bridges in such township or townships, or in the use of which such township or townships may be interested, and to prescribe the time for the payment of any such loan, which shall be within twenty years, and for assessing the principal and interest thereof upon such township or townships; and if any road or bridge is situated partly in one township and partly in another, or on the line between townships, or in case any township has any particular local interest in the construction or repair of any bridge, such board of supervisors may determine, under such regulations as they may establish, the relative proportion which each township shall contribute in the building and repairing thereof, and the amount so apportioned to the several townships shall be assessed and collected in the same manner as other township taxes are now assessed and collected by law. § 4518.

See § § 2270, 2272, 2274n, 2306-2311, and § § 4746 and 4747, C. L. of 1915; also Act 305 of 1917 which provides for establishing a county road system, applicable only to Houghton, Kent, Saginaw and Wayne counties.

§ 2275, C. L. 1915, requires that none of the powers mentioned in the fifteenth subdivision (similar to this § 4518) shall be exercised without a vote of two-thirds of all the members elected to such board.

The law allows the board to raise money only for necessary uses. Any loan which they raise must be for some of the purposes mentioned in the statute. Money cannot be raised by the board to be paid over to the towns, without any definition of purposes, and to be spent under the direction of town officers.—Atty. Gen. v. Supervisors, 34 / 46. A board of super-

visors cannot raise more than $1,000 annually for building purposes without a vote of the electors.—Callam v. Saginaw, 50 / 7; Pack v. Supervisors, 36 / 379; McMullen v. Judge, 102 / 610; Supervisors v. Simmons, 104 / 306. A board of supervisors has no power under this and (Subd. 10, Sec. 2274, C. L. 1915) to borrow money to meet the current expenses of the county, but the same must be raised by taxation.—Supervisors v. Warren, 98 / 145; McCurdy v. Shiawassee Co., 154 / 550. The board has no power to raise, as a part of the county tax, money to be expended generally upon the highways in a township.—Sage v. Aud. Gen., 72 / 638; McMullen v. Judge, 102 / 610. The limit of fifteen years applies to bonds issued under the county road system, Sec. 85.—Supervisors v. Simmons, 104 / 305; Stockle v. Silsbee, 41 / 621; Hecock v. VanDusen, 80 / 365; Mfg. Co. v. Echtinaw, 81 / 420; Tillotson v. Webber, 96 / 154; Twp. of Harrison v. Supervisors, 117 / 216. Promissory notes given by the treasurer of a county, pursuant to a resolution of the board of supervisors assuming to authorize him to borrow money for current expenses, are authorized by law, and no recovery can be had against the county upon them.—McCurdy v. Shiawassee Co., 154 / 550.

224. County Seat Removal.—The board of supervisors may submit the question of the removal of the county seat at the annual township meeting to the vote of the electors. For the law applicable thereto, prescribing notice, form of ballot, canvass and returns, see § § 2280-82, C. L. of 1915.

225. Question of Raising Money by Loan or Tax for County Purposes.—Whenever it shall become necessary, under the provisions of this act (§ § 2265-2295) to submit to a vote of the electors of any county the question of raising any sum of money by loan or by tax, the said board of supervisors, after having determined the sum necessary to be raised, whether the same shall be made by loan or by tax, shall proceed to give the notice of such determination and of the time when the question will be submitted to the electors of such county in the several townships. The provisions prescribing the time of notice, the form of ballot, the manner of the election and returns thereof are to be found in § 2283, C. L. of 1915.

BALLOT: The form of ballot prescribed need not be literally followed, as the provision therefor is merely directory. A substantial compliance is sufficient.—Thomas v. Kent Co. Circuit Judge, 116 / 106.

226. Exigency Tax for Roads and Bridges.—If, in the opinion of the commissioner and township board, it shall be necessary to raise more than one thousand dollars, in addition to that already provided for, the township may order that the question of raising money for such building, rebuilding or repairing of roads or bridges be submitted to the electors of said township. If the order be made within one month preceding the annual township meeting the question shall be submitted at such meeting, but otherwise a special meeting may be called and the township board may determine the form of notice as prescribed in the next section, and at such meeting the electors may vote a sum, not exceeding one-half of one per cent in any one year on the assessed valuation of the real and personal estate of such township, as may appear by the then last assessment, for the purposes in this section specified. § 4416. [See Form No. 12.]

227. Notice and Conduct of Election.—Notice of such vote to be taken, whether it be at an annual or special meeting, must be given in the manner and for the length of time prescribed by law for holding special township meetings; and such notice shall state the amount of such proposed tax, and the bridge or bridges, road or roads, for the building, rebuilding or repair of which the money proposed to be raised is to be applied. The vote in such cases shall be by ballot, and the ballots shall express "For the bridge tax," or "Against the bridge tax"; "For the exigency road tax," or "Against the exigency road tax," and the result shall be as a majority of those voting shall determine. Elections for such purpose shall be conducted, and the result ascertained

and certified, in the manner provided by law for annual and special township meetings. § 4417. [See Form No. 13.]

228. Money Voted to Be Included in Tax Levy.—Any moneys voted pursuant to the last two preceding sections shall be reported to the supervisor and included in the next ensuing tax levy, and the commissioner may draw his orders upon the township treasurer for the amount so voted in anticipation of the collection of such moneys, such orders to be applied to the purpose for which the moneys were voted, and to no other purpose. § 4418.

229. Meeting May Vote Money for Erecting Town Hall or Other Building.—The inhabitants of each township may, at any legal meeting, by a vote of the qualified electors thereof, grant and vote any sum of money, not exceeding one per cent in any one year upon the assessed valuation of the taxable real and personal estate of such township, as appears by the last equalized and perfected tax-roll of the township, for the purpose of erecting a town hall, or other building or buildings required for the public use of such inhabitants, in whole or in part, for township purposes. But no such vote shall be taken, nor appropriation made, at such legal meeting of any township, unless a notice of intention to move for such a vote and appropriation, signed by at least twelve freeholders of such township, shall have been posted up in five of the most public places in such township, at least ten days previous to the day of such meeting, which said notice shall specify the amount to be raised for such purpose; and no money shall be raised by tax, until a majority of the qualified electors, voting at such meeting, shall, by ballot, authorize the same. § 2049. [See Form No. 14.]

CONSTRUED: When an act authorizes the question of raising a tax for a specific purpose, to be submitted to the electors, without prescribing the form of ballot to be used, it is necessary, in order to render the vote operative, that the ballot of the voter should show that the specific question, contemplated by the act, was passed upon.—People v. Woodhull, 14 / 28, 32; Mills v. Richland Twp., 72 / 100, 108.

230. Meeting May Vote Tax for Library.—Upon petition of fifty voters the question of voting a tax not to exceed one mill on the dollar for the establishment of a free public library, shall be submitted at the next regular annual township meeting; and when such free public library shall have been established, there shall be elected at the next annual township meeting a permanent library board of six directors. Annually thereafter two directors shall be elected. The law relating to the submission of this question, the form of ballot, etc., is compiled under "Township and District Libraries," Secs. 89 to 94 of this Guide.

PART III.

TOWNSHIP OFFICERS.

CHAPTER I.—Election and Qualification.
CHAPTER II.—Terms of Office.
CHAPTER III.—Powers and Responsibilities.
CHAPTER IV.—Vacancies.
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CHAPTER VII.—Public Moneys and Property.
CHAPTER VIII.—Public Records, Books and Papers.
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CHAPTER I.

ELECTION AND QUALIFICATIONS OF TOWNSHIP OFFICERS.

231. Constitutional Provisions.—There shall be elected annually on the first Monday of April in each organized township one supervisor, one township clerk, one commissioner of highways, one township treasurer, not to exceed four constables and one overseer of highways for each highway district, whose powers and duties shall be prescribed by law. Const. VIII, 18.

There shall be elected in each organized township not to exceed four justices of the peace, each of whom shall hold the office for four years and until his successor is elected and qualified. At the first election in any township they shall be classified as shall be prescribed by law. A justice elected to fill a vacancy shall hold the office for the residue of the unexpired term. Const., VII, 15.

232. Township Officers to be Elected.—At the annual township meeting there shall be an election for the following officers: One supervisor, one township clerk, one treasurer, one commissioner of highways, as many overseers of highways as shall be provided for by law, so many justices of the peace as there are by law to be elected in the township, and so many constables as are to be elected, not exceeding four in number. § 2054.

UPPER PENINSULA: In addition to the officers enumerated in this section, there will be chosen, in such townships in the Upper Peninsula as organize themselves into single school districts, five trustees at the first such election, and one trustee annually thereafter, a successor or successors to the trustee or trustees whose term of office shall expire. See Sec. 988.

OFFICERS: The regulation of township affairs legally concerns none but the people of the township and cannot be lawfully vested in any officers imposed upon the township from without. An appointment of a supervisor for the remainder of the term of his predecessor is a valid temporary appointment, though it may not prevent an election. A township temporarily represented by an appointed supervisor has the same voice upon the board of supervisors that it had while represented by the supervisor elected to such office.—Peck v. Bd. of Suprs., 102 / 347.

NOTE: See also Michigan Election Law, Act 203 of 1917, Chap. II, Sec. 13. As to election of member of board of review, see Sec. 217 of this Guide.

233. Officers Chosen by Ballot.—Each of the officers named in the last preceding section, except overseers of highways, shall be chosen by ballot. § 2055.

OVERSEERS: As to manner of election of overseers of highways, see Sec. 165 of this Guide.

234. Election of Member of Board of Review.—Annually, at the township meeting, there shall be elected one member of the board of review, for two years. See Sec. 793 of this Guide.

235. Who Eligible to Elective Office.—No person except a citizen of the United States and an elector is eligible to any elective office contemplated in this chapter. § 2162.

NOTE: The chapter referred to is Chap. 66, being Secs. 2046 to 2197 inclusive, C. L. of 1915.

236. Constitutional Oath of Office.—Township officers must, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

> "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability."

No other oath, declaration, or test shall be required as a qualification for any office or public trust. Const., XVI, 2.

CONSTRUED: The phrase "office or public trust" includes every important function of government.—Atty. Gen. v. Detroit Com. Council, 58 / 213.
The term officer can be taken to refer to only such officers as have some degree of permanence and are not created by a temporary nomination for a single or transient purpose.—Underwood v. McDuffee, 15 / 361; Shurbun v. Hooper, 40 / 505.
The provision of the constitution has an unvaried application to officers of all grades—state, county, township, school, district and municipal.—People v. Salsbury, 134 / 549.

237. When Oath of Office Taken and Where Filed.—All officers except justices of the peace, required to be elected at township meetings by ballot, shall, before entering upon the duties of their offices, and within ten days after notice of their election, respectively take and subscribe the oath of office prescribed by the sixteenth article of the constitution, before the township clerk or other officer authorized to administer oaths, and file the same with the township clerk, who shall record the same; and such oath shall be administered without reward, and certified by the officer before whom the same was taken, with the date of taking the same. § 2095.

238. Officers to Qualify Within Ten Days.—Township officers shall qualify within ten days after election. Act 203 of 1917, Chap. II, Sec. 13. See Sec. 401 of this Guide.

239. Clerk to Notify Persons of Their Election.—Within two days after the election of any officers at a township meeting, the clerk shall transmit to each person elected to any township office, and whose name shall not have been entered on the poll list at such election as a voter, a notice of his election. § 2096. [See Form No. 88.]

240. Overseers and Poundmasters to File Acceptance.—Each overseer of highways and poundmaster elected at a township meeting shall, within ten days after notice of his election, file with the township clerk a notice in writing of his acceptance, and in default thereof he shall be deemed to have refused to serve. § 2096. [See Form No. 88.]

241. When Justices to Enter Upon Their Duties.—The persons so elected justices of the peace, shall enter upon the duties of their offices respectively, as follows:

1. Those elected for the full term of four years, on the fourth day of July next succeeding their election;

2. Those elected to fill vacancies, and those elected at the first township meeting in any new township, immediately upon the filing of their oath of office and security with the county clerk, as required by law. § 2097. See Sec. 401 of this Guide.

242. Notice to Trustees-elect in Certain U. P. Townships.—In townships in the Upper Peninsula, having the single township school district system, the clerk shall notify the trustees elected at the annual meeting of their election within five days thereafter. See Sec. 976 of this Guide.

243. Penalty for Neglect to Qualify.—If any person elected to any township office, except that of justice of the peace, of whom an oath of office is required, who is not exempted by law from holding the office to which he is elected, shall not, within ten days after notice of his election, take and subscribe the oath of office required by law, and cause the same to be filed with the township clerk, or if any such officer of whom a bond or security shall be required, shall not file such bond or security within the time above limited for filing his said oath, he shall forfeit and pay the sum of ten dollars; and if any person elected to the office of overseer of highways or poundmaster, and not exempted by law from holding such office, shall refuse to serve, he shall forfeit and pay the like sum, unless the person selected shall file with the clerk of his township, within said ten days, a written notice stating that he declines accepting the office. § 2104.

244. Sureties to Justify Their Pecuniary Responsibility.—Hereafter no bond required by law to be signed by surety or sureties shall be received and accepted, or approved by any officer or other person or board, whose duty it is or may be to accept or approve of any such bond, unless the surety or sureties signing such bond shall first have justified their pecuniary responsibility under their signature, in writing, indorsed on said bond or attached thereto. And before any such bond shall be received and approved or accepted, the justification of the sureties thereof shall, in the aggregate, equal the penal sum of the bond, and show that the sureties thereof are worth in unencumbered property not exempt from execution under the laws of this State the penal sum thereof, after payment of all just debts, claims and liabilities. § 195. [See Form No. 15.]

BONDS: Bonds referred to as "official bonds" are very clearly confined to the bonds of public officers.—Bissell v. Wayne Probate Judge, 58 / 238.

Failure of the sureties on an official bond to justify, under oath, as thus required, does not of itself work a forfeiture of the office; and where an officer has filed a bond thus defective, but perfect in other respects, the office cannot, after he has entered upon and performed the duties thereof for part of his term, be declared vacant, without notice to him, and an opportunity to file a new bond.—Bennett v. Benfield, 80 / 265.

245. Penalty for False Statement of Pecuniary Responsibility.—Such oath of justification shall be administered by some officer authorized by law to administer oaths, and any person knowingly or wilfully making any false statement of his pecuniary responsibility in such justification shall be guilty of perjury and liable, upon conviction thereof, to the penalty of perjury. § 196.

246.—Penalty for Accepting or Approving Bond Without Justification.—Any person or persons receiving and accepting or approving any such bond without such justification shall be guilty of a misdemeanor, and shall further be liable for all damages that may be sustained or in-

curred by any person by reason of such defective bond being accepted or approved. § 197.

247. Bond May be Executed by Surety Company.—Whenever any bond, undertaking, recognizance or other obligation is by the law of the State or by the charter, ordinances, rules or regulations of any municipality, board, body, organization or public officer, or in any judicial or other proceeding, required or permitted to be made, given, tendered or filed with surety or sureties, and whenever the performance of any act, duty or obligation, or refraining from any act is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company qualified to act as surety or guarantor; and such execution by such company of such bond, undertaking, recognizance, obligation or guarantee shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule, regulation or order that such bond, undertaking, obligation, recognizance, or guarantee shall be executed by one surety, or by one or more sureties, or that such sureties shall be residents or householders or freeholders or either or both or possess any other qualifications. § 9219.

SUFFICIENCY: This section is evidently designed to permit the substitution of one surety, if it is a corporation organized under the act, in place of two, required by other provisions of law; and where no act of acceptance is required, such bond, as executed is declared sufficient.—Schmitt v. Com. Council of Clinton, 111 / 102.

As to sufficiency, etc., of surety company bonds, when furnished by township treasurer, § 4038. Sec. 1361 of this Guide.

248. Bond with One Surety Sufficient.—In any cause, matter or proceeding, where, by the laws of this State, the giving of any bond is required or permitted, and more than one surety is required, it shall be lawful for the court, officer or person who is authorized or required by law to approve and accept such bond, to accept and approve a bond with but one surety, provided the surety thereto is a corporation qualified to act as surety or guarantor as hereinafter provided. § 9220.

249. Officer May Deposit Funds with Trust Company, Etc.—It is lawful for any party, of whom a bond or undertaking is required, and whose surety thereon is such a company, to agree with such surety, for the deposit of any and all moneys and other depositable assets, for which such surety is or may be held responsible, with a trust company, safe deposit company or bank, authorized by law to transact business as such in this State, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys and assets or any part thereof, except with the written consent of such surety, or an order of the court made on such notice to them as such court may direct. § 9224.

250. Not Eligible as Members of Township Board of Education.—In a township organized as a single school district, the several township officers shall be ineligible to election as members of the board of education. See Sec. 983 of this Guide.

CHAPTER II.

TERMS OF OFFICE OF TOWNSHIP OFFICERS.

251. Officers, Except Justices, to Serve One Year.—The terms of office of township officers, except justices of the peace, shall be one year, be-

ginning as soon as such officers are elected and qualified: Provided, Said township officers shall qualify within ten days after election. Act 203 of 1917, Chap. II, Sec. 13.

252. Term of Office of Justice of the Peace.—Justices of the peace hold their offices for four years, except when elected to fill a vacancy. See Sec. 1805 of this Guide.

253. School Trustees in Township Districts of U. P.—Trustees in township school districts in the Upper Peninsula shall hold their offices for three years and until their successors are elected and qualified. See Sec. 988 of this Guide.

254.—Officer to Continue in Office Until Successor is Qualified.—The person holding any office shall continue to hold the same, after the expiration of the term thereof, until his successor shall be elected or appointed and qualified. When any person shall be elected to fill a vacancy in any elective office, he shall hold the same only during the unexpired portion of the regular term limited to such office, and until his successor shall be elected and qualified. Act 203 of 1917, Chap. XXIV, Sec. 5.

CHAPTER III.

GENERAL PROVISIONS RELATING TO POWERS AND RESPONSIBILITIES OF TOWNSHIP OFFICERS.

255. Officer is Responsible for Acts of Deputy Under Tax Law.—When an officer is authorized to do any act, his deputy shall have the same authority, and such officer shall be responsible for the acts of his deputy. § 4108.

256. Prosecuting Attorney Shall Give Free Counsel to Supervisor and Treasurer.—It shall be the duty of the prosecuting attorney of each county to give his counsel and advice to the township treasurers, and the supervisors of the county, whenever they or any of them may deem it necessary for the proper discharge of the duties imposed upon them in this act, free of charge. § 4099.

257. Officers to Report Penalty or Forfeiture to Supervisor.—It shall be the duty of every other township officer, who shall know, or have good reason to believe that any penalty or forfeiture has been incurred within his township, forthwith to give notice thereof to the supervisor. § 13405.

258. Penalty for Disguising with Intent to Resist Officer.—Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder or interrupt any officer or any other person, in the legal performance of his duty, or the exercise of his rights under the constitution and laws of this State, whether such intent be effected or not, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, and may also be bound to good behavior for the term of one year, after conviction of the offense, or after the expiration of such imprisonment. § 14990.

259. Neglect of Public Office a Misdemeanor.—When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform

such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor. § 14996.

260. Board or Officers Not to Create Debt Unauthorized.—No board, officer or officers shall create any debt or liability against the township, or issue any warrant, certificate or order for the payment of money, except when the creation of such debt or liability or the payment of such money has been authorized by a vote or by the provisions of law. § 2048. See Sec. 208 of this Guide.

261. Embezzlement by Public Officer Deemed to be Larceny.—If any officer, agent, clerk, or servant of any city, township, incorporated town, or village, school district, or other public or municipal corporation shall embezzle or fraudulently dispose of or convert to his own use, or shall take or secrete with intent to embezzle and convert to his own use, without consent of his employer any money or other property of another, which shall have come to his possession, or shall be under his charge by virtue of such office or employment, he shall be deemed by so doing, to have committed the crime of larceny. § 15310.

262. False Swearing in Proceedings Under Tax Law, Deemed Perjury.—Any person who, under any of the proceedings required or permitted by this act, shall wilfully swear falsely, shall be guilty of perjury and subject to its penalties. § 4117.

263. Punishment for Neglect of Duties, Etc., Under Tax Law.—Any officer, who shall wilfully neglect or refuse to perform any of the duties imposed upon him by this act shall, when no other provision is made herein, be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, in the discretion of the court, and shall be liable to any person injured thereby to the full extent of the injury sustained. § 4118.

264. Duties of Officers Under Liquor Law.—The provisions of law prescribing the powers and duties of township officers under the several acts for the prohibition of the liquor traffic, will be found compiled in Chap. XII of Part XVI, devoted to "Justices of the Peace." See Secs. 1877 to 1891 of this Guide.

CHAPTER IV.

VACANCIES IN OFFICE.

265. Constitutional Provisions as to Vacancies.—The legislature may provide by law the cases in which any office shall be deemed vacant and the manner of filling vacancies, where no provision is made in this constitution. Const., XVI, 5.

Whenever a justice of the peace shall remove from the township in which he was elected, or by a change in the boundaries of such township shall be placed without the same, he shall be deemed to have vacated the office. Const., VII, 19.

266. When Office to Become Vacant.—Every township office, including the office of justice of the peace, shall become vacant, upon the happening of either of the events specified in the following section, as creating a vacancy. § 2106.

267. What Events to Create Vacancy.—Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office:

First, The death of the incumbent;

Second, His resignation;

Third, His removal from office;

Fourth, His ceasing to be an inhabitant of this State; or, if the office be local, of the district, county, township, city, or village for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;

Fifth, His conviction of any infamous crime, or of any offense involving a violation of his oath of office;

Sixth, The decision of a competent tribunal declaring void his election or appointment; or,

Seventh, His refusal or neglect to take his oath of office, or to give or renew any official bond, or to deposit such oath or bond in the manner and within the time prescribed by law.

And the supervisor of any township, in which the office of a township treasurer or justice of the peace may become vacated by operation of this act, shall immediately transmit to the county clerk of the county in which such township treasurer or justice of the peace resides, a notice in writing, officially signed by him, informing the county clerk that the office of such township treasurer or justice of the peace is vacated. § 241. [See Form No. 16.]

268. When Justice Deemed to Vacate Office.—When a new township shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed to have vacated their respective offices. § 2098.

269. Vacancies Filled by Appointment.—Whenever a vacancy shall occur in any township office, except the office of justice of the peace, it shall be filled by appointment by the township board of the township, and the person appointed shall hold the office for the remainder of the unexpired term. Act 203 of 1917, Chap. IV, Sec. 6. See following section as to filling by appointment vacancy in office of justice of the peace.

Whenever there shall be a vacancy, or when the incumbent shall, from any cause, be unable to perform the duties of his office, in either of the township offices, except that of justice of the peace and township treasurer, the township board may make temporary appointments of suitable persons to discharge the duties of such offices respectively; and such persons, so appointed, shall take the oath of office, or file the notice of acceptance required by law, and shall continue to discharge such duties until the office is filled by election, or until the disability aforesaid be removed. §2107. [See Form No. 25.]

CONSTRUED: A township temporarily represented by an appointed supervisor has the same voice upon the board that it had before the vacancy.—Peck v. Supervisors, 102 / 346, 349. See also Bank v. St. Joseph, 46 / 528; Locke v. Highway Comrs., 107 / 633; Murphy v. Montmorency Ct. Judge, 159 / 394.

270. Filling of Vacancy in Office of Justice.—A vacancy in the office of justice of the peace shall be filled at the next annual township election. Act 203 of 1917, Chap. IV, Sec. 6.

A justice elected to fill a vacancy shall hold his office for the residue of the unexpired term. Const., VII, 15.

Whenever a vacancy shall occur, by reason of death, resignation, removal or otherwise, in the office of justice of the peace in this State, the township board of the township or the legislative body of the city shall be empowered to fill such vacancy and such appointee shall hold office by virtue of such appointment only until the next succeeding township or city election. Act 76 of 1917.

271. Appointment of Treasurer to Fill Vacancy.—The township board shall appoint a treasurer for the remainder of the term, in case the treasurer shall refuse to serve, or shall vacate his office or be disabled from completing the duties thereof. See Sec. 1366 of this Guide.

In case any township treasurer neglects to give either of the bonds required, or shall die, resign, or move out of the township, or become unable to discharge the duties of his office, the township board shall forthwith appoint a new treasurer. See Sec. 1384 of this Guide.

272. Board May Fill Vacancy in Board of Review.—The township board may temporarily fill any vacancy which shall occur in the membership of the board of review. § 4022. See Sec. 794 of this Guide.

273. Filling of Vacancy When Town Board Reduced Below Quorum.—In case the township board becomes disorganized, or reduced below the number of a quorum, as provided by law, by or through the death or removal of the officers composing the same, or from any other cause, then a special township meeting may be called and proceeded in, in all respects as in the case of newly organized townships. § 2073. See, also, Secs. 17 to 25 of this Guide.

274. Term of Office of Person Elected to Fill Vacancy.—When any person shall be elected to fill a vacancy in any elective office, he shall hold the same only during the unexpired portion of the regular term limited to such office, and until his successor shall be elected and qualified. Act 203 of 1917, Chap. XXIV, Sec. 5.

CHAPTER V.

RESIGNATIONS AND REMOVALS.

275. Resignations of Elective Officers, How Made.—Resignations of all officers elected at township meetings shall be in writing, signed by the officer resigning, and addressed to the township board, and shall be delivered to and filed by the township clerk, and when a justice of the peace resigns, such clerk shall immediately transmit a copy of such resignation, certified by him, to the county clerk. § 2105.

276. Resignation of Appointive Officers, to Whom Made.—Resignations by all officers holding their offices by appointment and not by election shall be made to the body, board, or officer that appointed them. § 239, Subd., 5.

277. Legislature May Provide for Removals.—Any officer elected by a county, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law. Const., IX, 8.

278. Governor May Remove Certain Officers.—The Governor may remove all justices of the peace and township officers chosen by the electors of any township, when he shall be satisfied from sufficient evidence submitted to him, as hereinafter provided, that such officer is incompetent

to execute properly the duties of his office, or has been guilty of official misconduct, or of willful neglect of duty, or of extortion, or habitual drunkenness, or has been convicted of being drunk, or whenever it shall appear by a certified copy of the judgment of a court of record of this State that such officer after his election or appointment shall have been convicted of a felony; but the Governor shall take no action upon any such charges made to him against any such officer until the same shall have been exhibited to him in writing, verified by the affidavit of the party making them, that he believes the charges to be true, with a statement of the prosecuting attorney of the county, that in his opinion the case demands investigation. And no such officer shall be removed for such misconduct or neglect, unless charges thereof shall have been exhibited to the Governor as above provided, and a copy of the same served on such officer, and an opportunity given him of being heard in his defense. § 245.

NOTICE: Whenever cause must be assigned for the removal of an officer, he is entitled to notice, and a chance to defend.—Hallgren v. Campbell, 82 / 255.

279. Governor May Direct Investigation of Charges.—The governor may direct the attorney general, or the prosecuting attorney of the county in which such officer may be, unless such prosecuting attorney be the officer charged, to conduct an inquiry into the charges made, and the said attorney general or such prosecuting attorney shall thereupon give at least eight days' notice to the officer accused, of the time and place at which he will proceed to the examination of witnesses in relation to such charges, before some circuit court commissioner, or judge of probate, for the same county, and he shall also, at the time of giving such notice, serve on the officer accused a copy of such charges. § 246.

CONSTRUED: Charges must be sufficiently specific.—Unless eight days' notice is given no removal can be made.—People v. Therrien, 80 / 187.

280. Accused Officer Entitled to Subpoena for Witnesses.—On the application of the officer accused to the prosecuting attorney, or to any justice of the peace, he shall be entitled to the like process of subpoena, obedience to which may be enforced in the same manner, as provided in § 247, C. L. of 1915, by the commissioner or judge of probate before whom the witness may be conducted. § 248.

281. Drunkenness Cause for Removal from Office.—The drunkenness of any person holding office under the constitution or laws of this State shall be good cause for removal from office by the authority and in the manner provided by law. § 253.

CHAPTER VI.

COMPENSATION OF TOWNSHIP OFFICERS.

282. Compensation of Township Officers.—The following township officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the township in the duties of their respective offices to be verified by affidavit, whenever required by the township boards:

First, The officers composing the township boards, board of registration, board of health, board of review, inspectors of election, clerks of the

poll and commissioners of highways, three dollars per day, and at the same rate for parts of days;

Second, The supervisor for taking the assessment and for all services not connected with above boards, three dollars per day and at the same rate for parts of days;

Third, The township clerk, as clerk of the board of commissioners of highways and of the township board, three dollars per day and at the same rate for parts of days, but no township officer shall be entitled to pay for acting in more than one capacity at the same time. § 2154. As Am. by Act 89 of 1917.

283. Commissioner and Overseer Paid from Certain Funds.—The township highway commissioner and the overseer of highways shall be entitled to such compensation as the township board shall decide. The compensation of the highway commissioner shall be paid from the general fund of the township, in the same manner as other township officers are paid. The compensation of the overseer of highways shall be paid from the road repair fund, on approval of the township board. § 4331. See Secs. 282, 1449, 1504, 1552 and 1754 of this Guide.

284. Board May Allow Compensation Not Otherwise Provided For.—For services not otherwise provided for by law, rendered to townships by township officers in the duties of their respective offices, the township board shall audit and allow such compensation as they shall deem reasonable. § 2155.

COSTS: Costs incurred by a township officer in proceedings instituted in his own behalf, and without any direction from the township board, to establish his right to office, are not a charge against the township.—Scott v. Bingham, 32 / 492.

285. Official Extortion Defined and Penalty Therefor.—If any person shall wilfully and corruptly demand and receive from another, for performing any service or any official duty, for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, and if any public officer, for whom a salary is provided by law in full compensation for all services required to be performed by him, or by his clerks or deputies, shall wilfully and corruptly demand and receive from any person any sum of money as a fee or compensation for any services required by law to be performed by him in his said office, or by his clerks or deputies, he shall be deemed to have committed the offense of extortion, and shall be punished by a fine not exceeding one hundred dollars; but no prosecution for such offense shall be sustained unless it shall be commenced within one year next after the offense was committed. § 14993.

286. Officer Shall Receive Only Such Fees as Allowed by Law.—No judge of any court, justice, sheriff or other officer whatsoever, or other person to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, but such as is or shall be allowed by the laws of this State. § 13730.

287. Officer Shall Not Demand Fees Unless Service Actually Rendered.—No fee or compensation allowed by law, shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him, but this section shall not prevent any officer from de-

manding any fee herein allowed for any service of which he is entitled by law to require the payment, previous to rendering such service. § 13731.

288. **Penalty for Violation of Certain Sections.**—A violation of either of the last two sections shall be deemed a misdemeanor; and the person guilty thereof shall be liable to the party aggrieved for treble the damages sustained by him, and such violation shall be a cause for forfeiture of office. § 13732.

289. **No Fee to Be Taxed, Unless for Actual Services.**—No fee shall be taxed for services, as having been rendered by any attorney, clerk, sheriff or other officer, in the progress of a cause, unless such service was actually rendered, except when otherwise expressly provided. § 13733.

290.—**Officer Shall Give Receipt if Required.**—Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing and deliver to such person, a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he refuse or neglect to do so, he shall be liable to the party paying the same for three times the amount so paid. § 13735.

291. **Fee for Administering Oath of Office.**—No fee shall be charged by any officer, for administering the oath of office to any member of the legislature, to any military officer, or to any township officer, and no more than twelve cents shall be charged for administering such oath to any other officer. § 14611.

292. **Officers' Compensation to be Paid by Township.**—All compensation of officers in the assessment and collection of taxes in townships and in the return of delinquent taxes to the county treasurer, except fees collected by township treasurers on their tax rolls, shall be paid by the township. § 4088.

293. **Officers Shall Render Service Required by Commissioner.**—The just fees and charges of all justices of the peace, sheriffs, constables, and other officers who may render any service for or at the request of any commissioner of highways under the provisions of this act (the General Highway Law) shall be allowed by the township board and paid by the township, and it is hereby made the duty of such officers to render any service required of them under the provisions of this act, and when such service is required by a commissioner of highways, it shall not be necessary to pay or tender to such officers their fees for such service. § 4479.

294. **Extra Compensation Shall Not be Granted.**—No township authority shall grant or authorize extra compensation to any public officer, agent, employe or contractor after the service has been rendered or the contract entered into. Salaries of public officers, except circuit judges, shall not be increased nor shall the salary of any public officer be decreased, after election or appointment. Const., XVI, 3.

CHAPTER VII.

PUBLIC MONEYS AND PROPERTY.

295. **Officers Not Required to Receive Other Than Lawful Money.**—Whenever any check or bank draft shall be tendered for the payment

of any debt, taxes or other obligation due to the State or to any municipality therein, such check or draft shall operate as a payment made on the date said check or draft was received and accepted by the receiving officer, if it shall be paid on presentation without deduction for exchange or cost of collection: Provided, however, That no receiving officer shall be required to receive in payment of any debt, taxes or other obligation collectible or receivable by him any tender other than gold or silver coin of the United States, United States treasury notes, gold certificates, silver certificates, or national bank notes. § 277.

CHECKS: See Suprs. v. Bennett, 185 / 545.

296. Officers and Agents to Pay Over the Same Funds they Receive.—All collecting and disbursing officers, all county and township treasurers, and all other public officers or agents, through whose hands public moneys pass, are hereby required to pay into the State, county, and township treasuries, as the case may be, or to State, county and township creditors, as the case may be, at the option of such creditors, or to civil and military officers entitled to compensation for public services, at the option of such officers, the same description of funds which they shall have received in the collection of taxes or other public dues. Any of the aforesaid collecting and disbursing officers or agents, who shall violate any of the provisions of this act, or shall appropriate any of the public moneys to his or their own private use, except in pursuance of law, or shall lend to others, or otherwise embezzle any of the said public moneys, shall be prosecuted for said offense, and, on conviction thereof, be punished by fine and imprisonment; the fine not to be more than one thousand dollars, and the imprisonment not to exceed five years, at the discretion of the court. § 278. See notes to Sec. 1353 of this Guide.

EMBEZZLEMENT: See People v. Bringard, 39 / 22.

297. Public Moneys Defined.—All moneys which shall come into the hands of any officer of the State, or of any officer of any county, or of any township, school district, highway district, city or village, or of any other municipal or public corporation within this State, pursuant to any provision of law authorizing such officer to receive the same, shall be denominated public moneys within the meaning of this act. § 298.

INTEREST: Interest belongs to the county, not to the treasurer.—Sup. v. Verkerke, 128 / 202.

298. Public Money to be Kept Separate From All Other Funds.—It shall be the duty of every officer charged with the receiving, keeping, or disbursing of public moneys, to keep the same separate and apart from his own money, and he shall not commingle the same with his own money nor with the money of any other person, firm or corporation. § 299.

299. Purposes for which Public Moneys to be Used.—No such officer shall, under any pretext, use, nor allow to be used, any such moneys for any purpose other than in accordance with the provisions of law; nor shall he use the same for his own private use; nor loan the same to any person, firm or corporation without legal authority so to do. § 300.

300.—Interest on Public Moneys to Belong to General Fund.—In all cases where public moneys are authorized to be deposited in any bank, or to be loaned to any individual, firm, or corporation, for interest, the

interest accruing upon such public moneys shall belong to and constitute a general fund of the State, county, or other public or municipal corporation, as the case may be. § 301.

301. Officers Not to Receive Pecuniary Consideration for Deposit of Funds.—In no case shall any such officer, directly or indirectly, receive any pecuniary or valuable consideration as an inducement for the deposit of any public moneys with any particular bank, person, firm, or corporation. § 302.

302.—Act to Apply also to Deputies, Agents, Etc.—The provisions of this act (Secs. 296 to 304 of this Guide) shall apply to all deputies of such officer or officers, and to all clerks, agents, and servants of such officer or officers. § 303.

303. Penalty for Violation of Act.—Any person guilty of a violation of any of the provisions of this act (Secs. 296 to 304 of this Guide) shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment in the discretion of the court. But nothing in this act shall prevent a prosecution under the general statute for embezzlement in cases where the facts warrant a prosecution under such general statute. § 304.

304. Penalty for Illegal Payment of Public Money.—Any officer who shall wilfully or corruptly draw or issue any warrant, order, or certificate for the payment of money in excess of the amount authorized by law, or for a purpose not authorized by law, shall be deemed guilty of a misdemeanor, and may be punished as provided in the preceding section. § 305.

305. Receipts from County Treasurer to be Filed with County Clerk.—In all cases where money is paid into the county treasury by any officer of a township or county, other than township treasurers, the said officer shall file with the clerk of the county a duplicate receipt of the same, which duplicate it shall be the duty of the county treasurer to furnish at the time of such payment; and said clerk shall present the same to the board of supervisors of the county, or to the board of county auditors in Wayne county, at the next meeting thereof. § 2515.

306. Unlawful Appropriation of Public Money or Property.—If any person holding any public office in this State, or if the agent or servant of such person, knowingly and unlawfully appropriates to his own use, or to the use of any other person, the money or property received by him in his official capacity or employment, of the value of fifty dollars or upwards, the person so offending shall be deemed guilty of a felony, and shall, upon conviction, be punished by imprisonment in the state prison, at hard labor, not to exceed ten years, or by fine not exceeding five thousand dollars, or both said fine and imprisonment. § 15378.

EMBEZZLEMENT OF PUBLIC FUNDS: See People v. Glazier, 159 / 530. Intent as an element of the offense.—People v. Warren, 122 / 520. A township treasurer's agent is liable under this section for misappropriation of public funds, even though his appointment as agent is illegal.—People v. Sanders, 139 / 442. In a prosecution under this section for unlawfully appropriating public funds, it may be shown in defense that an apparent shortage on the books arose from having accepted logs in payment of taxes, as logs cannot be accepted in payment of taxes.—People v. Seeley, 117 / 263.

307. What Word "Property" Includes.—The word property shall be deemed to include all goods, chattels, securities of all kinds, and all in-

struments written or printed, or partly written and partly printed, the forging or counterfeiting of which is or may be punishable by law. § 15379.

308. Failure to Turn Over Money or Property.—A failure or refusal of any public officer to pay over and deliver to his successor all moneys and property which should be in his hands as such officer, shall be prima facie evidence of an offense against the provisions of Sec. 306. § 15380.

CONSTRUED: People v. Seeley, 117 / 265; People v. Warren, 122 / 521; People v. Glazier, 159 / 544.

CHAPTER VIII.

PUBLIC RECORDS, BOOKS AND PAPERS; THEIR PRESERVATION AND INSPECTION, AND DELIVERY TO SUCCESSOR.

309. Penalty for Mutilating, Carrying Away or Refusing to Deliver Public Records.—All books, papers, or records belonging or in anywise appertaining to the offices of the several townships and school district officers of this State, are public property, belonging to the people of the State of Michigan, to be used and preserved by and under the direction of said officers, and be by them preserved during their continuance in office; and any person or persons who shall wilfully carry away, mutilate, or destroy any of such books, papers, records, or any part of the same, and any person or persons who shall retain and continue to hold the possession of any books, papers, records, or parts thereof, belonging to the aforesaid offices, and shall refuse to deliver up said books, papers, records, or parts thereof to the proper officer having charge of the office to which the said books, papers, or records belong, upon demand being made by such officer, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding one thousand dollars, or imprisonment in the State prison not exceeding three years. § 15079.

OFFENSES: This section creates three offenses: (1) Wilfully carrying away the property; (2) Refusing to deliver it up on proper demand; (3) Destroying or mutilating it.—People v. Bussey, 82 / 54.

PUBLIC RECORDS: A written statement given by a taxpayer to a supervisor regarding his taxable property is a public record within the meaning of this act.—People v. Jewell, 138 / 621.

310. Officers to Afford Facilities for Inspection of Records.—That the officers having the custody of any county, city or township records in this State, shall upon request furnish proper and reasonable facilities for the inspection and examination of the records and files in their respective offices and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than four hours per day to all persons having occasion to make examination of them for any lawful purpose: Provided, That the custodian of said records and files may make such reasonable rules and regulations with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer: And provided further, That such officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office: And provided further, That no books, records or files shall be removed from the office of the custodian thereof for any purposes whatever, except by the order of the judge of any court

of competent jurisdiction, or in response to a subpoena *duces tecum* issued therefrom. § 3449.

INSPECTION: The legislature intended to assert the right of all citizens in the pursuit of a lawful business, to make such examination of the public records in the public offices as the interest of their business may require, subject to such rules and restrictions as are reasonable and proper under the circumstances.—Burton v. Tuite, 78 / 375.
PUBLIC RECORDS: As to what are public records, see Burton v. Tuite, 78 / 218, 363; Schmedding v. May, 85 / 4; Aitcheson v. Huebner, 90 / 643; Kal. Gazette v. Co. Clk., 148 / 460; Mass. Mut. Ins. Co. v. Trustees, 178 / 176.

311. Officer Shall Deliver Books and Papers to Successor.—Whenever any person shall be removed from office, or the term for which he shall have been elected or appointed shall expire, he shall, on demand, deliver over to his successor all the books and papers in his custody as such officer, or in any way appertaining to his office, and every person violating this provision shall be deemed guilty of a misdemeanor. § 13554.

One who is shown to be entitled to the office of supervisor can compel his predecessor to deliver to him the books and papers pertaining to the office.—Schneider v. McIvor, 58 / 511. The statutory proceeding for compelling a public officer to surrender the books and papers of his office to his successor is summary and does not apply for determining the latter's right to the office, but only for ascertaining whether he has been declared by the proper authority to have been elected or appointed.—Curran v. Norris, 58 / 512. Public proclamation by the inspectors of election, after canvassing the votes, that a specified person has been elected, is sufficient prima facie evidence of his right to the books and papers of the office to warrant an order to the former incumbent to show cause why he should not surrender them to his successor.—Id. While the right to a public office is to be settled by a proceeding in the nature of quo warranto and not in these proceedings, yet the constitutionality of the act, under which claimant assumes to hold office, can be attacked by defendant, for, if such act is void, there is no office and claimant has no right to the books, etc.—Fillmore v. Van Horn, 129 / 56.

312. Successor may Make Complaint when Books are not Delivered.—If any person shall refuse or neglect to deliver over to his successor, any books or papers, as required in the preceding section, such successor may make complaint thereof to any judge of a court of record, or to any circuit court commissioner for the county where the person so refusing shall reside. § 13555.

313. Order to Show Cause, Etc.—If such officer be satisfied by the oath of the plaintiff and such other testimony as may be offered, that any such books or papers are withheld, he shall grant an order, directing the person so refusing to show cause before him, within a reasonable time, why he should not be compelled to deliver the same. § 13556.

The statutory proceeding for compelling a public officer to surrender the books and papers of his office to his successor is summary and does not apply for determining the latter's right to the office, but only for ascertaining whether he has been declared by the proper authority to have been elected or appointed. Public proclamation by the inspectors of election, after canvassing the votes, that a specified person has been elected is sufficient prima facie evidence of his right to the books and papers of the office to warrant an order to the former incumbent to show cause why he should not surrender them to his successor.—Curran v. Norris, 58 / 512. The officer granting the order must satisfy himself that the defendant has been removed from office or his term has expired.—Curran v. Norris, 58 / 514. While the right to a public office is to be settled by a proceeding in the nature of quo warranto and not in these proceedings, yet the constitutionality of the act, under which claimant assumes to hold office can be attacked by defendant, for, if such act is void, there is no office and claimant has no right to the books, etc.—Fillmore v. Van Horn, 129 / 56.

314. Hearing and Determination Upon Complaint.—At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such officer shall proceed to inquire into the matters set forth in the complaint. If the person charged with withholding such books and papers, shall make proof satisfactory to such officer, that he has truly delivered over to his successor all such books and papers in his custody, or appertaining to his office, within his knowledge, all further proceedings before such officer

shall cease, and the person complained against shall be discharged. If the person complained against shall not make such satisfactory proof and it shall appear that any such books or papers are withheld, the officer before whom such proceedings shall be had shall, by warrant, commit the person so withholding to the jail of the county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law. In the case stated in the last section, if required by the plaintiff such officer shall also issue his warrant directed to the sheriff or any constable of the county, commanding them, in the day time, to search such places as shall be designated in such warrant, for such books and papers as belonged to the officer so removed, or whose term of office expired, in his official capacity, and which appertained to such office, and seize and bring them before the officer issuing such warrant. Upon any books or papers being brought before such officer, by virtue of such warrant, he shall inquire and examine whether the same appertain to the office, from which the officer so refusing to deliver was removed, or of which the term expired, and if the same pertain to such office, he shall cause them to be delivered to the plaintiff. § § 13557-61.

315. How Books and Papers Obtained When Officer Dies.—If any person appointed or elected to any office shall die, or his office shall in any way become vacant, and any books or papers belonging or appertaining to such office shall come to the hands of any person, the successor in such office may, in like manner as hereinbefore prescribed, demand such books or papers from the person having the same in his possession; and if withheld, an order may be obtained, and the person charged may in like manner make satisfactory proof of the delivery of all such books and papers that ever came to his possession; and in case of omission to make such satisfactory proof and to deliver up the books and papers so demanded, such person may be committed to jail, and a search warrant may be issued, and the property seized may be delivered to the plaintiff as hereinbefore prescribed. § 13562.

316. Liabilty for Failure to Deliver Books to Successor.—Every person or officer who shall receive any of the books distributed by the secretary of state, which are required by this act to be placed in his library, and each township officer, shall, when he ceases to hold such office, deliver over to his successor in office all such books received by him; and any person who shall neglect or refuse to deliver over to his successor in office all such books received by him as aforesaid, shall be liable to such successor in an action for money had and received to the full amount it shall cost him to furnish himself with such books, and costs of suit; which action shall, on request, be brought and prosecuted by the prosecuting attorney of the county. § 852.

317. Penalty for Retaining Official Books.—Any person who shall knowingly and wilfully retain any such books in his possession, or refuse to pass them over to his successor, shall also be subject to a penalty in a sum not exceeding fifty dollars, or be imprisoned in the county jail not exceeding three months, or both, in the discretion of the court. But township officers receiving the abstract of reports of county superintendents of the poor, of sheriffs, or of the insane, deaf, dumb and blind, shall not be required to pass them over to their successors. § 852.

318. Penalty for Failure to Deliver Books, Money, Etc., to Successor.—If any officer of any township or school district within the State, into whose hands money, books, papers, evidence of debt, or other property shall come by virtue of his office or agency, shall wilfully refuse or neglect, on demand, to deliver the same to his successor in office or to the person authorized by law to receive or have charge of the same, he shall be punished by imprisonment in the State prison not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year. § 15309.

319. Provisions in Case Books are Lost, Burned, Etc.—In case of a loss by fire, or in any manner whatsoever, beyond his control, of a book or books by an officer, who is required to transmit them to his successor, or if the same is so worn as to become useless, said officer shall make a statement setting forth all the circumstances under which the loss occurred, which statement shall be sworn and subscribed to before an officer entitled to administer oaths, and certified to by the clerk of the county under his hand and seal of the court, and forward the same to the secretary of state, who, after examination of said affidavit, he being convinced that the facts as set forth in the affidavit are true, and that in his judgment the officer is not responsible for the loss of the book or books, is hereby empowered and authorized to replace the book or books lost as claimed, and in his discretion may send the book or books either to the county clerk or to the township clerk in whose township the loss occurred. § 854.

320. Officer to Deliver Township Officers' Guide to Successor.—Every township officer who shall receive a copy of said book shall deliver the same, with any supplement or supplements thereto, in his hands, to his successor in office when such successor shall be elected or appointed and qualified, and the delivery thereof may be compelled in the manner now provided by law for compelling the delivery of books and papers by public officers to their successors in office. § 2181.

CHAPTER IX.

RECALL OF ELECTIVE OFFICERS.

321.—Township Officers Subject to Recall.—Every elective officer, in the State of Michigan, except judges of courts of record and courts of like jurisdiction, is subject to recall by the legal voters of the State or of the electoral district in which he is elected as hereinafter provided. § 3988.

322. Petitions for Recall of Officer.—Petitions demanding the recall of any elective county, township, village or school official shall be filed with the probate judge. The petition shall be signed by at least twenty-five per centum of the number of electors who voted for the governor at the last preceding election in the election district of the official sought to be recalled, except in case of officials of fractional school districts, in which case twenty-five per centum of the number of qualified electors assessed for school taxes shall be sufficient. In case of school officers sought to be recalled, any qualified elector at a school election shall be qualified to sign the petition. Said petition, or part thereof, shall be printed or typewritten and shall state clearly the reason or reasons for

said demand. The signatures thereto shall be in writing and shall state the ward, precinct and street number or township in which said petitioner lives. The circulator of the petition, or his agent or representative thereof, shall attach thereto the affidavit that the said signatures are the signatures of qualified electors; that they are genuine and made in good faith for the purposes set forth in said petition, but no such petition shall be circulated against any officer until he has actually performed the duties of his office for a period of forty-five days for a legislative office, and three months for any other office. § 3989. As Am. by Act 44 of 1917.

323. Recall Election, Inspectors, Form of Ballot, Etc.—Whenever a petition signed as provided in the preceding section is filed against any officer, a special election shall be called within five days thereafter by the official with whom such petition shall have been filed. In case of county, township, village, city or school recall elections under this act, the official with whom the petition is filed shall designate and appoint qualified electors of the election district where such election is to be held, to act as inspectors, clerks and gatekeepers of the election, the number to be the same as is required under the general election laws of the State, recall election of school officers to be governed by the general election laws for township or city elections, according to whether such school district is embraced within the limits of a township or city. The official making the appointment of inspectors, clerks and gatekeepers shall serve notice of such appointments either personally or by mail upon the persons so appointed, at least five days before such election is to be had, and in case the persons so designated, or any of them, shall fail to attend, the places of such absentee or absentees shall be supplied in the manner for supplying absentees at regular elections. The official calling such election shall provide such election supplies as are required under the election laws of the State and shall prepare and have printed the recall ballot herein provided for. The expense of providing such election supplies, printing, et cetera, shall be a charge against the municipality wherein such election is held, such expense to be paid upon presentation of bills approved by the official calling such election. Such election shall be held within twenty days after the calling thereof to determine whether the electors will recall said officer, but said officer shall continue to perform the duties of his office until the result of said election is declared. The recall ballot used at said special election shall have printed thereon, in not more than two hundred words, the reason or reasons for demanding the recall of said officer as set forth in said petition, and in not more than two hundred words, the officer's justification of his course of office. There shall be printed on the recall ballot the following questions:

Shall (name the person against whom the recall petition is filed) be called from the office of (title of the office)?

Yes. [ ]
No. [ ]

§ 3990. As Am. by Act 44 of 1917.

324. In Case of Recall, Election to Fill Vacancy.—If, upon a canvass of the votes cast upon the question of the recall of such officer, a majority of the voters voting shall decide in favor of such recall, the election

board shall certify such result as soon as may be to the officer with whom the recall petition was filed, and said office shall be deemed to be vacant and within five days after receiving certification, the officer with whom the recall petition shall have been filed shall call a special election to be held within thirty days, for the filing of such vacancy, the same provisions made in section three for the calling of the special recall election to govern in the calling of such second special election: Provided, That the officer so recalled shall continue to perform the duties of his office until his successor shall have been elected and qualified. Unless he shall voluntarily withdraw, the officer so recalled shall be considered a candidate for re-election to said office and other candidates for the office may be nominated and voted for at said special election by filing with the officer with whom the recall petition has been filed, a petition within fifteen days after said special election is called, signed by not less than three per centum of the qualified electors of the electoral district, and said candidates so filing said petition shall be considered nominated for said office. The candidate who has received the highest number of votes for the vacancy created by such recall shall be considered duly elected for the remainder of the term and the votes for said candidate shall be returned to the officer calling such special election, who shall issue a certificate of election to the successful candidate. § 3991. As Am. by Act 44 of 1917.

325. **When Second Recall Election May be Held.**—After filing such petition and after such special election, no further recall petitions shall be filed against the same incumbent of such office during the term for which he is elected, unless such further petitioners shall first pay into the public treasury, which has paid such election expense, the whole amount of election expenses for the preceding special election held for the recall of said incumbent. § 3992.

326. **Recall Elections Governed by General Law.**—The laws relating to nominations and elections shall govern all nominations and elections under this act in so far as not to conflict therewith. § 3993.

PART IV.

THE REGISTRATION OF ELECTORS.

(Act No. 216, Public Acts of 1917.)

CHAPTER I.—General Provisions.
CHAPTER II.—Registration Books.
CHAPTER III.—Registering of Electors.
CHAPTER IV.—Re-Registration.
CHAPTER V.—Boards of Registration.
CHAPTER VI.—Not Included in This Guide.
CHAPTER VII.—Not Included in This Guide.
CHAPTER VIII.—Registration in New Townships.
CHAPTER IX.—Investigation of Registrations.
CHAPTER X.—Miscellaneous Provisions.
CHAPTER XI.—Penalties.

CHAPTER I.

GENERAL PROVISIONS.

327. Only Registered Electors May Vote.—The inspectors of election at any election in this State, or in any district, county, township, or city thereof, shall not receive the vote of any person whose name is not registered in the registration book of the precinct in which he offers to vote; but the name of a qualified elector may be registered on the day of any election or official primary election pursuant to Section 10 of Ch. III of this act. Act 126 of 1917, Ch. I, Sec. 1.

Sec. 10 of Chap. III, above referred to, is Sec. 346 of this Guide.
For constitutional provisions relative to elective franchise, see Secs. 384 to 390 of this Guide.
REGISTRATION NECESSARY: This act (registration act) is grounded upon the same article of the constitution which gives the right to vote and is imperative; it must be complied with before the elector can vote, and the omission of the board of registration to meet is of no avail to the elector as an excuse for not registering.—People v. Kopplekom, 16 / 342. See Common Council v. Rush, 82 / 537; Atty. Gen. v. McQuade, 94 / 441.
PURITY OF ELECTIONS: The laws to regulate elections and to preserve their purity, and to guard against abuses of the elective franchise, must be reasonable, uniform and impartial, and must be calculated to facilitate and secure, rather than to subvert and impede, the exercise of the right to vote.—Atty. Gen. v. Detroit, 78 / 553. The legislature may regulate, but may not destroy, the enjoyment of the elective franchise.—Brown v. Bd. of Elec. Comrs., 174 / 477.

328. Persons Entitled to be Registered.—Every person who has the constitutional qualifications of an elector, or who will have such qualifications at the next ensuing election or official primary election, [and] shall be entitled to be registered as an elector in the voting precinct in which he resides. Id., Ch. I, Sec. 2.

CHAPTER II.

REGISTRATION BOOKS.

329. Registration Books.—For every election precinct there shall be a book in which to register the names of all qualified electors residing in that precinct who may apply for registration. Such book shall be known as the "Registration Book" for the precinct in which it is to be used. In each registration book a separate section may be provided for the

registering of the names of female electors, or a separate registration book may be provided for the registering of the names of female electors. Act 126 of 1917, Ch. II, Sec. 1.

As to separate books for women electors, see Secs. 579 and 580 of this Guide.

330. **Form of Registration Books.**—Every registration book hereafter procured shall be in index form, substantially bound, and contain spaced and ruled lines for at least twelve hundred names. Each book shall have on the front cover thereof the words "Registration Book" and the names of the township or city and ward in which it is to be used; also the number of the election precinct, if the precinct has a number. The pages of each registration book shall be arranged and ruled in columns, with headings, so that on each line may be written the name of an elector, the date of his registration, and, if the elector resides in a city or incorporated village, his residence by street and number, or a description of the locality of his residence. There shall also be columns in which may be checked the names of registered electors as they apply for ballots to vote. There shall be an additional column, headed "Remarks," for special entries or notations. Id., Ch. II, Sec. 2.

331. **Books Used Until Replaced.**—The registration books in use in the several townships and cities, at the time this act takes effect, shall continue to be the official registration books until replaced by new registration books pursuant to the provisions of this act. Id., Ch. II, Sec. 3.

332. **Preparation of New Books.**—Whenever the registration book for any election precinct is so nearly filled, or so worn, soiled or marked, that, in the judgment of the township or city clerk, as the case may be, a new registration book for such precinct is necessary or desirable, such clerk shall bring the matter to the attention of the township board or legislative body, as the case may be, and, on being authorized by such board or legislative body, shall procure a new registration book for such precinct, and shall write therein, in proper alphabetical order, the names of all persons then remaining residents of such precinct whose names are entered in the old registration book, together with the dates and descriptions as they appear on such old registration book. When the said clerk shall have completed such new registration book, the former registration book shall be deemed invalid, and such new registration book shall be the official registration book of such precinct. Id., Ch. II, Sec. 4.

333. **Custody of Registration Books.**—The registration book or books of any township or city shall remain in the custody of the township or city clerk, as the case may be, at all times except when they are in use by boards of registration or boards of inspectors of an election or an official primary election, as provided by this act. Id., Ch. II, Sec. 5.

334. **Books Delivered to Election Inspectors.**—At any election or official primary election, and as soon as the poll in each precinct is open, the clerk having the custody of the registration book shall cause it to be placed in the hands of the inspectors of election, who shall use such registration book during such election, and return it to the clerk immediately thereafter: Provided, That the words official primary election shall be deemed to include and mean official nominating primaries. Id., Ch. II, Sec. 6.

335. Book for New Election Precinct.—Whenever any township or city shall be divided, pursuant to law, into two or more election precincts, or the boundaries of the election precincts of any township or city shall be changed, the township or city clerk, as the case may be, shall procure a new registration book for each such precinct so established, or whose boundaries shall have been changed, and shall transcribe to such new registration book from the township or city registration books the names of such electors as are residents of such new or changed precincts. Such new registration books, when completed, shall be the official registration books for such precincts. Id., Ch. II, Sec. 7.

336. Mutilation of Book Felony.—Whoever shall wilfully, cut, burn, mutilate or destroy any registration book, or copy thereof filed for preservation, or shall unlawfully take and carry away any such registration book or copy, or shall unlawfully conceal or refuse or neglect to surrender the same with intent to prevent its being used, as authorized by law, shall be deemed guilty of a felony. Whoever shall falsify such registration book, or copy thereof, by unlawfully erasing or obliterating any name or entry lawfully made therein, or by unlawfully inserting therein any name, note or memorandum, shall be deemed guilty of forgery. Id., Ch. II, Sec. 8.

CHAPTER III.

REGISTERING OF ELECTORS.

337. Application for Registration.—Any person, not already registered, who possesses the constitutional qualifications of an elector, or who will, on the day of the next ensuing regular or special election or official primary election, possess such qualifications, may make application for registration to the clerk of the township or city in which he resides on any day other than Sunday, a legal holiday, the day of any regular or special election or official primary election, and the days intervening between the third Saturday preceding any such election and the day of said election: Provided, however, That in any organized township or city having a population of less than ten thousand, the clerk may receive applications for registration up to and including the second Saturday preceding any such election. Any such clerk shall not be required to receive any application for registration at any other place than his office, or the place or places designated pursuant to Section 3 of this chapter, but may, in his discretion, receive such application wherever he may be. Act 126 of 1917, Ch. III, Sec. 1.

338. When Clerk Not Required to be at His Office.—In case any township clerk does not regularly keep his office open daily during certain hours, he shall not be required to be at his office, for the purpose of receiving applications for registration, on any particular day, nor during any specific hours of any day, except as provided in the next following section. Id., Ch. III, Sec. 2.

339. Registration Days.—In every township and city the clerk thereof shall be at his office, or in some other convenient place therein (which place shall be designated by the township clerk or the city clerk, as the case may be), on the fourth and third Saturdays preceding any election or official primary election in said township or city, and on such other

days prior to said third Saturday as shall be designated by the township board or legislative body of said city, not exceeding five days in all, for the purpose of reviewing the registration and registering such of the qualified electors of said township or city as shall appear and apply therefor. Each said clerk shall be at the place designated at the hour of eight o'clock a. m., and there remain until the hour of eight o'clock p. m., of each said day. The said clerk shall give at least one week's public notice of the days that he will be at his office, or other convenient place, designating it, for the purpose aforesaid, specifying the hours of each day, as required by the provisions of this section. Such notice shall be given by posting written or printed notices in at least one of the most conspicuous places in each election precinct, and by publishing such notice in some newspaper or newspapers published in said township or city, if any newspaper be published therein, if in the discretion of the township board or legislative body of said city publication shall be considered advisable and necessary in addition to the written or printed notices posted as aforesaid. Id., Ch. III, Sec. 3.

340. **Application Not to be Received Where Liquors are Sold.**—No township or city clerk shall receive any application for registration in any room or building where intoxicating liquors for beverage purposes are sold or kept for sale, or in any room adjacent to a room where such liquors are sold or kept for sale, or connected by hall or doorway with such room or saloon where intoxicating liquors for beverage purposes are sold or kept for sale. Any person who violates any of the provisions of this section shall, upon conviction, be adjudged guilty of a misdemeanor. Id., Ch. III, Sec. 4.

341. **Review of Registrations.**—On the day or days designated, pursuant to Sec. 3 of this chapter, for reviewing the registration, the township or city clerk, as the case may be, shall review the list of names in the registration book for each precinct in the township or city. If at any time it shall come to the knowledge of the said township or city clerk, or if, upon such review, it shall be found that any person whose name is registered in any registration book has died, or has removed from the precinct and ceased to reside therein, the said clerk shall, at such time, or at the time of such review, write the word "Dead" opposite the name of each such deceased person, and the word "Removed" opposite the name of each such person who has removed, together with the initials of the person making the entry and the date of the entry. Thereafter such names shall be considered and treated as no longer upon such registration book. In case any such entry by the clerk shall be made falsely, maliciously and without credible information, the said clerk shall, upon conviction, be adjudged guilty of a misdemeanor. If any such entry shall be erroneously made, and the person opposite whose name such erroneous entry was made shall thereafter appear at any election in his precinct and claim the right to vote, the board of inspectors of election, being satisfied that such person is a qualified elector of such precinct, shall cause his name to be registered anew. In any such case the board of election inspectors may, in their discretion, require that such person be sworn as to his qualifications to vote in that precinct. Id., Ch. III, Sec. 5.

342. **Who May Register.**—Upon application, as provided in this act, to the clerk of the township or city in which he resides, it shall be the

right of each and every person then residing in any such township or city, and who, at the next ensuing election or official primary election, will be a qualified elector therein, and whose name is not already registered, to have his name entered in the registration book of the precinct in which he resides, and said clerk shall enter the names of such applicants in the registration book. If any person shall cause to be entered upon the registration book as his own a false name, he shall, on conviction, be deemed guilty of a misdemeanor. Id., Ch. III, Sec. 6.

When a person applies to the board of registration for the purpose of having his name registered as a voter, and offers to be sworn as to his qualifications, it is the duty of the board to examine such person upon his oath. They have no right to reject him on mere inspection. Where the return made by respondents denies that the relator was entitled to be registered as a voter, an issue will be directed to determine the fact.—People v. Board of Registration of Nankin, 15 / 157. Where a person appears before the ward board of registration and claims to be registered, the board are bound to examine him under oath and hear testimony offered by him. They have no right to pass upon the question of his legal right by mere personal inspection.—People v. Board of Registration, 17 / 427.

343. Personal Request for Registration Necessary.—No township or city clerk shall write in a registration book the name of any person without a request made in person to such clerk. The name of the elector shall be plainly written in the registration book by the said clerk, and such clerk shall note the date of entry, the residence, street name and number, if any, and any other information which may be properly entered therein. Id., Ch. III, Sec. 7.

344. Clerk to Question Applicant.—Every township and city clerk shall have power, and it shall be his duty, to question every person presenting himself for registration, touching his residence and other qualifications as an elector of the precinct; and said applicant shall make truthful answers to all such questions. The said clerk may, for the more perfect examination of the applicant, employ and swear an interpreter truly and impartially to interpret all such questions and answers. If the applicant shall, in his answers, make any material statement which is false, he shall, upon conviction thereof, be adjudged guilty of a misdemeanor. The clerk may, in his discretion, require the applicant to answer under oath questions as to his qualifications as an elector. Id., Ch. III, Sec. 8.

The laws to regulate elections, and to preserve their purity, and to guard against abuses of the elective franchise, must be reasonable, uniform and impartial, and must be calculated to facilitate and secure, rather than to subvert and impede, the exercise of the right to vote.—Attorney General v. Detroit, 78 / 546. No registry law is valid which deprives an elector of his constitutional right to vote by any regulation with which it is impossible for him to comply.—Id. Requirements which compel a naturalized elector to produce his certificate, or show by evidence other than his own oath that such certificate was issued, make an unfair and unnecessary distinction between native born and naturalized electors.—Id.

QUALIFIED ELECTORS: See Chap. I, Sec. 1, and notes thereto.

345. Only Actual Residents May Register.—The name of no person but an actual resident of the precinct at the time of registration, and entitled, under the constitution, if remaining such resident, to vote at the next election or official primary election, shall be entered in the registration book. Neither the township nor city clerk shall write or enter in the registration book the name of any person, nor suffer it to be written therein, whom such clerk shall know, or have good reason to believe, not to be such resident and so qualified; nor shall any person knowing, or having good reason to believe, himself not to be such resident and so qualified, cause his name to be entered in the registration book. Every person so offending shall, upon conviction, be adjudged guilty of a misdemeanor. Id., Ch. III, Sec. 9.

346. Registration on Election Day.—If any person whose name is not registered shall offer and claim the right to vote at any election, and shall, under oath, state that he is a resident of such precinct and has resided in the township or ward twenty days next preceding such election, designating particularly the place of his residence, and that he possesses the other qualifications of an elector under the constitution; and that, owing to the sickness or bodily infirmity of himself, or of some member of his family, or owing to his absence from the township or city on public business or his own business, and without intent to avoid or delay his registration, he was unable to make application for registration on the last day provided by law for the registering of electors preceding such election; then the name of such person shall be registered, and he shall then be permitted to vote at such election. If such applicant shall, in said matter, wilfully make any false statement, he shall be deemed guilty of perjury, and, upon conviction, be subject to the pains and penalties thereof: Provided, That any city may provide by its charter or by resolution approved by a majority of the members of its legislative body for the registration of such sick and absent voters on the last Saturday preceding any election at the places of voting in the several voting districts of such city instead of on election day. Id., Ch. III, Sec. 10.

OBJECT OF LAW: The object of a registry law, or of any law to preserve the purity of the ballot box, and to guard against abuses of the elective franchise, is not to prevent any qualified elector from voting, or unnecessarily to hinder or impair his privilege.—Atty. Gen. v. Detroit, 78 / 546. A registration law is unreasonable which contains no provision by which an elector who is sick on the days fixed for registration can vote on election day.—Id. No elector can lose his right to vote, the highest exercise of the freeman's will, except by his own fault or negligence.—Id. In order to prevent fraud at the ballot box, it is proper and legal that all needful rules and regulations be made to that end; but it is not necessary that such rules and regulations shall be so unreasonable and restrictive as to exclude a large number of legal voters from exercising their franchise. The power of the legislature in such cases is limited to laws, regulating the enjoyment of the right, by facilitating its lawful exercise, and by preventing its abuse. The right to vote must not be impaired by the regulation. It must be regulation, not destruction.—Id. The legislature may regulate, but may not destroy the enjoyment of the elective franchise.—Brown v. Bd. of Elec. Comrs., 174 / 477.

REGISTRATION ON ELECTION DAY: Where a person applies for registration on election day, the inspectors act upon discretion and are not compelled to admit a vote, unless satisfied of its legality. (Per Campbell, J.)—People v. Cicott, 16 / 302. If an elector is unable to attend the meetings of the board for certain specified reasons, he may be registered on election day upon taking the prescribed oath.—Atty. Gen. v. McQuade, 94 / 441.

347. Transfer of Registration.—Any registered and qualified voter who has removed from one election precinct of a township or ward to another election precinct of the same township or ward, shall have the right, on any day previous to election day, on application to the township or city clerk, as the case may be, to have his name transferred from the registration book of the precinct from which he has removed to the registration book of the precinct in which he then resides. Such elector shall have the right to have such transfer made on election day by obtaining from the board of inspectors of election of the precinct from which he has removed a certificate of transfer, and presenting the said certificate to the board of election inspectors of the precinct in which he then resides. In every such case of transfer, the township or city clerk or the board of inspectors of election issuing such certificate shall cause a line to be drawn, in the registration book of the precinct from which such elector has removed, through the name of said elector, and in the column headed "Remarks" in such registration book, opposite the name of such elector, shall cause to be entered the words, "Transferred to Precinct No....." (giving the number), together with the initials of the said clerk or some member of the board of inspectors of election, as the case may be, and the date of the transfer. * * * Id., Ch. III, Sec. 11.

348. Clerk May Appoint Assistants.—The township clerk of any township or the city clerk of any city is hereby authorized and empowered to appoint such number of assistants as may be necessary to carry out the provisions of this act, but the number of assistants shall in no case exceed the number of precincts in such township or city. For the purpose of registering qualified electors, such assistants shall possess all the powers and authority conferred by this act upon township and city clerks. Each such assistant, before he enters upon the discharge of his duties, shall take and subscribe the constitutional oath of office, which oath shall be filed in the office of the township or city clerk, as the case may be. For their services under this act, said assistants shall receive such compensation as shall be fixed by the township board or the legislative body. Id., Ch. III, Sec. 12.

CHAPTER IV.

RE-REGISTRATION.

349. Re-registration Mandatory Every Four Years in Towns of Over 10,000.—In every year in which presidential electors are to be chosen, there shall be a re-registration of the qualified electors of each township and city of this state having a population of ten thousand or more, as shown by the last preceding federal census. Act 126 of 1917, Ch. IV, Sec. 1.

350. Board in Townships Less Than 10,000 May Require Re-registration.—If, in any township or city having a population of less than ten thousand, as shown by the last preceding federal census, the township board or legislative body may in its discretion declare, by resolution passed not later than the fifteenth day of August of any year in which presidential electors are to be chosen, by a majority vote of the members-elect of such township board or legislative body, that it is desirable to have a re-registration of the qualified electors of such township or city, then in such case there shall be in said year a re-registration of the qualified electors of such township or city. Id., Ch. IV, Sec. 2.

351. Re-registration in September and October.—A re-registration of qualified electors, in accordance with the provisions of this chapter, shall be had in the months of September and October, and shall be completed on the third Saturday before the next general November election. All the provisions of this act relative to the registration of qualified electors shall apply with like force and effect to any such re-registration. Id., Ch. IV, Sec. 3.

352. When New Books to Be Provided.—Whenever a re-registration is to be had in any township or city, the clerk thereof shall provide, at the expense of the township or city, as the case may be, a new registration book for each election precinct in such township or city. Such registration book shall be opened for re-registration on the first secular day of September, and such re-registration shall be completed on the third Saturday before the next general November election. When such re-registration shall be completed, the former registration books in such township or city shall thenceforth be deemed invalid and shall not be used in any subsequent election; and no person shall vote at any election or official primary election in any such township or city, after such re-registration, whose name shall not have been registered anew under

the provisions of this act relative to re-registration, or be afterwards entered. in accordance with this act, on such new registration book for the election precinct in which he resides. Id., Ch. IV, Sec. 4.

353. Notice of Re-registration.—In every township or city in which a re-registration of the qualified electors is to be had, the township or city clerk, as the case may be, shall give public notice that there will be a re-registration of the qualified electors of such township or city in the months of September and October, that all qualified electors must re-register in order to be entitled to vote at subsequent elections, and that the third Saturday preceding the following general November election will be the last day on which applications for registration will be received. Such notice shall also name the place or places where, and the hours during which, applications for registration may be made. Such public notice shall be given, in the month of August of the year in which such re-registration is to be had, by posting written or printed notices in at least five of the most conspicuous places in each voting precinct, and by publishing such notice in some newspaper or newspapers published in such township or city, if any newspaper be published therein, if in the discretion of the township board or legislative body of said city publication shall be considered advisable and necessary in addition to the written or printed notices posted as aforesaid, at least once in each week for two successive weeks next preceding the first day of September of the year in which such re-registration is to be had. Id., Ch. IV, Sec. 5.

CHAPTER V.

BOARDS OF REGISTRATION.

354. How Boards of Registration May Be Provided.—The township board of any township or the legislative body of any city may, in its discretion, by resolution, passed in the month of September of any even numbered year, provide for a board of registration, or may divide such township or city into two or more registration districts and provide for a board of registration for each such district; but in the division of a township or city into registration districts, no election precinct shall be divided. Act 126 of 1917, Ch. V, Sec. 1.

355. Clerk Shall Recommend Persons for Board of Registration.—Before the first day appointed for the meeting of a board or boards of registration in any such township or city, the township board or the legislative body, as the case may be, shall appoint for each such registration district a board of registration, which board shall consist of one or more qualified electors (as determined by resolution of the township board or legislative body) residing in the township, ward or registration district for which they are appointed. In each such township or city, the township clerk or city clerk, as the case may be, shall recommend to the township board of his township or the legislative body of his city, at least thirty days before any such election or official primary election, competent persons for appointment as members of such board or boards; but, in making such appointments, the township board or legislative body shall not be confined to the persons so recommended by the township or city clerk. In case any such township board or legislative body shall fail to appoint members of a board or boards of registration within the

time prescribed herein, the township clerk or city clerk, as the case may be, shall make said appointments. Id., Ch. V, Sec. 2.

356. Clerk to Appoint Members of Board in Case of Vacancy.—In case any member of a board of registration shall fail to appear at any meeting of said board, the township or city clerk, as the case may be, shall appoint some other qualified elector of the registration district to serve in the place of the member so absent. Id., Ch. V, Sec. 3.

357. Members of Board Required to Take Oath.—Each member of a board of registration, before he enters upon the discharge of his duties, shall take and subscribe the constitutional oath of office, which oath shall be filed in the office of the township or city clerk, as the case may be. Id.

358. Days of Meeting.—In any township or city providing for a board or boards of registration, such board or boards shall meet on the third Saturday preceding any election or official primary election, and on such other days prior to said third Saturday as shall be designated by the township board or legislative body, not exceeding five days in all for the purpose of reviewing the registration and registering such of the qualified electors of said township or city as shall appear and apply therefor. Each board of registration shall meet at a place designated by the township board or legislative body and shall remain in session from the hour of eight o'clock a. m., until the hour of eight o'clock p. m., of each said day: Provided, That the township board or legislative body may, by resolution, direct that the board or boards of registration shall remain in session on any or all days on which they meet until the hour of ten o'clock p. m. Id., Ch. V, Sec. 4.

359. Clerk Not to Receive Applications on Days Boards Are in Session.—In any township or city providing for a board or boards of registration, the township or city clerk, as the case may be, shall not receive applications for registration on the day or days on which the board or boards of registration are in session; but on such day or days all applications for registration shall be made to the board of registration of the proper district. Applications at other times for registration in any such township or city shall be received by the township or city clerk, as the case may be, as provided in chapter III of this act, it being the intent and purpose of this act to permit and provide for the registration or re-registration of qualified electors in any such township or city on application to the township or city clerk as well as on application to a board of registration when boards of registration have been provided for. Id., Ch. V, Sec. 5.

360. Powers of Boards of Registration.—When a board or boards of registration are provided for in any township or city, such board or boards shall, at any session or sessions thereof, have the power and authority by this act given to a city or township clerk in receiving applications for registration and in registering the names of electors, and shall be governed by all the provisions of this act as to the receiving of applications and registering of names by township or city clerk. Id., Ch. V, Sec. 6.

361. Notice of Meeting of Board.—At least one week's public notice shall be given by the township or city clerk of the date, place, hours of meeting and the purpose of the session of the board or boards of registration in any such township or city. Such notice shall be given by

posting written or printed notices in at least five conspicuous places in each voting precinct, or by publishing such notice in some newspaper or newspapers published in said township or city, if any newspaper be published therein. Id., Ch. V, Sec. 7.

362. **When Clerk to Deliver Books to Board.**—As soon, at least, as the hour fixed for the commencement of any meeting of a board of registration, the clerk of the township or city, as the case may be, shall deliver to said board the registration book or books for each election precinct in the registration district for which such board of registration was appointed; and at the close of its session each board of registration shall immediately deposit the registration book or books with the township or city clerk and said clerk shall carefully preserve the same in his office. Id., Ch. V, Sec. 8.

The law requires the registration and poll lists to be preserved and filed. They are, therefore, public records and admissible as evidence of the facts therein stated.—Atty. Gen. v. May, 97 / 574.

363. **Town Board May Provide for Boards of Registration for Re-registration Only.**—Whenever a re-registration is to be had, pursuant to the provisions of this act of the qualified electors of a township or city which has not provided for a board or boards of registration according to the provisions of this chapter, the township board or legislative body, as the case may be, may, in its discretion, by resolution, passed by a majority vote of the members-elect, provide that, for the purposes of such re-registration only, there shall be a board or boards of registration in such township or city, and in such case all the provisions of this chapter shall apply with like force and effect to such re-registration for that year and no longer. Id., Ch. V, Sec. 9.

364. **Compensation of Members.**—Each member of a township board of registration shall receive the same compensation as provided by law for township inspectors of election. Id., Ch. V, Sec. 10.

[Chapters VI and VII of Act 126 of 1917, apply only to villages and are therefore omitted from this compilation.]

CHAPTER VIII.

REGISTRATION IN NEW TOWNSHIPS.

365. **Board, How Constituted.**—Whenever any new township shall be organized pursuant to law, the persons designated to act as inspectors of election of the first election to be held in such township, shall constitute a township board of registration. Any two of said inspectors shall constitute a quorum at the meeting of such board. Act. 126 of 1917, Ch. VIII, Sec. 1.

366. **When Board to Meet.**—For the purpose of registering the names of qualified electors of such township, the said board shall meet at some convenient place in such township on the third and second Saturdays next preceding the day fixed for holding the first election in said township, and shall remain in session from eight o'clock a. m., to eight o'clock p. m., of each such day. Id., Ch. VIII, Sec. 2.

367. **Names to Be Entered in Book.**—The name of every qualified elector applying for registration on either of such days shall be entered in the registration book or on registration sheets provided by the board for that purpose. Id., Ch. VIII, Sec. 3.

368. Notice to Be Given.—At least one week's public notice shall be given of the time, place and purpose of such meeting. Such notice shall be given by posting written or printed notices in at least five of the most conspicuous places in said township, or by publishing such notice in a newspaper published in such township, if a newspaper be published therein.—Id., Ch. VIII, Sec. 4. [Form No. 17.]

369. Members to Take Oath of Office.—Each member of the said board of registration shall, before entering upon the discharge of his duties, take and subscribe the constitutional oath of office. Id., Ch. VIII, Sec. 5.

370. Powers of Board.—Said board of registration shall have the same power and authority, and shall perform the same duties, relative to registration, by this act conferred upon and prescribed for boards of registration in townships and cities. Id., Ch. VIII, Sec. 6.

371. Clerk to Procure Registration Book.—As soon as the person elected township clerk at such first township election shall have qualified and entered upon the duties of his office he shall procure for such township, at the expense of the township, such a registration book as is prescribed by this act for townships and cities; and shall enter in such registration book the names, addresses, etc., of the qualified electors as registered by the board of registration preceding such first election. When completed such book shall thereafter be the registration book for such township. Id., Ch. VIII, Sec. 7.

CHAPTER IX.

INVESTIGATION OF REGISTRATIONS.

372. Investigation of Illegal Registrations.—Whenever it shall come to the knowledge of any township, city or village clerk that there is probable illegal or fraudulent registration in his township, city or village, or any precinct thereof, he shall have the power, and it shall be his duty, to make full investigation of the facts concerning such registration and to ascertain whether any names have been illegally or fraudulently registered. To this end such clerk is hereby authorized and empowered to call upon the police department of the city or the sheriff of his county, or both, to assist in making such investigation, and said police department and said sheriff are hereby required to render such assistance whenever the said clerk shall make request therefor, and to furnish to said clerk, at his request, all available men to assist in making such investigation. Any such clerk is hereby further authorized and empowered, whenever he deems it necessary or advisable, to appoint assistant examiners for the purposes of such investigation. Bills for the services of such examiners shall be approved by such clerk, and shall be audited and paid by the township board or legislative body of the township, city or village, as the case may be, in the same manner as the expenses of conducting elections are paid. Act 126 of 1917, Ch. IX, Sec. 1.

373. Duty of Clerk as to Illegal Registrations.—Whenever the city, township or village clerk shall determine that any name has been illegally or fraudulently entered upon the registration book of any election precinct in his city, township or village, or that there is good cause to believe that any name has been illegally or fraudulently registered, he shall

write the word "Challenge" opposite such name in the registration book, and shall lay before the prosecuting attorney of the county all the facts touching such registration. Id., Ch. IX, Sec. 2.

374. Examination of Challenged Voter.—If at any election any person shall offer to vote, claiming to be the person opposite whose name the word "Challenge" appears on the registration book, the inspectors of election shall at such time examine him under oath as to his qualifications as an elector in such precinct, the same in all respects and with like effect as though he had been challenged at the election by a challenger thereof. Id.

CHAPTER X.

MISCELLANEOUS PROVISIONS.

375. Clerk to Certify Names to County Clerk.—Every township clerk, within fifteen days after each general November and biennial spring election, shall make, certify to and transmit to the county clerk of his county, for filing in his office, a true copy of the contents of the registration book or books of his township, for which, when received, the county clerk shall give such clerk a receipt. Such clerk shall be entitled to receive for such copy, from the township, a fee at the rate of fifty cents for each one hundred names. Such copy, or a copy thereof certified to by the county clerk, shall be prima facie evidence of the contents of the original, and, in case of the loss or destruction of the original, shall be used in its stead. Act 126 of 1917, Ch. X, Sec. 1.

376. When Clerk Shall Furnish Names to Elector.—Any township or city clerk, on the demand of any qualified elector and on payment or tender of a fee at the rate of fifty cents for each one hundred names, shall make, certify to and deliver to such elector a true copy of the contents of any registration book in his custody, but this shall not be so construed as to prevent any person by himself or a clerk, making copies of such registration books, under the supervision of the said township or city clerk. Id., Ch. X, Sec. 2.

CHAPTER XI.

PENALTIES.

377. Wilful Violation of Duty.—Any wilful violation of duty by any person charged with the execution of this act or any provision thereof not herein particularly provided for, shall be deemed a misdemeanor, and the person guilty thereof shall be punished accordingly. It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information that any such offense has been committed, to cause the same to be prosecuted. Act 126 of 1917, Ch. XI, Sec. 1.

378. Misdemeanor.—Any person who violates any provision of this act, not herein particularly provided for, shall, upon conviction, be deemed guilty of a misdemeanor. Id., Ch. XI, Sec. 2.

379. Penalty for Wilful Failure.—Any person who wilfully fails to perform any duty enjoined upon him by any provision of this act, shall, upon conviction, be deemed guilty of a misdemeanor. Id., Ch. XI, Sec. 3.

380. Punishment for Misdemeanor.—Any person who shall be found

guilty of a misdemeanor under the provisions of this act shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XI, Sec. 4.

381. Penalty for Felony.—Any person found guilty of a felony under the provisions of this act shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the state prison for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XI, Sec. 5.

382. Penalty for Perjury.—Any person found guilty of perjury under the provisions of this act shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the state prison for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XI, Sec. 6.

383. Penalty for Forgery.—Any person found guilty of forgery under the provisions of this act shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the state prison for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XI, Sec. 7.

PART V.

GENERAL AND SPECIAL ELECTIONS.

[The chapter numbers I to XXV of the Michigan Election Law (Act 203 of 1917) are retained in this Part, the chapters which have no application to townships being omitted and their omission being noted.]

CHAPTER I.—Definitions and General Provisions.
CHAPTER II.—Holding of Elections.
CHAPTER III.—Special Elections.
CHAPTER IV.—Filling of Vacancies in Office.
CHAPTER V.—Notices of Elections.
CHAPTER VI.—Election Precincts.
CHAPTER VII.—Polling Places and Their Equipment.
CHAPTER VIII.—Inspectors and Clerks of Election.
CHAPTER IX.—Ballots.
CHAPTER X.—Conduct of Elections and Manner of Voting.
CHAPTER XI.—Assisted Voters.
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CHAPTER XIII.—Uniformity of Election Returns.
CHAPTER XIV.—Canvass by the Precinct Inspectors.
CHAPTER XV.—Precinct Counting Boards.
CHAPTER XVI.—Not Included in This Guide.
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CHAPTER XX.—Recounts.
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CHAPTER XXIII.—Not Included in This Guide.
CHAPTER XXIV.—Miscellaneous Provisions.
CHAPTER XXV.—Offenses and Penalties.
CHAPTER XXVI.—Elective Franchise for Women.
CHAPTER XXVII.—Voting Machines at Elections.

CONSTITUTIONAL PROVISIONS.

384. Elective Franchise.—In all elections, every male inhabitant of this State, being a citizen of the United States; every male inhabitant residing in this State on the twenty-fourth day of June, eighteen hundred thirty-five; every male inhabitant residing in this State on the first day of January, eighteen hundred fifty; every male inhabitant of foreign birth, who, having resided in the State two years and six months prior to the eighth day of November, eighteen hundred ninety-four, and having declared his intention to become a citizen of the United States two years and six months prior to said last named day; and every civilized male inhabitant of Indian descent, a native of the United States, shall be an elector and entitled to vote; but no one shall be an elector or entitled to vote at any election unless he shall be above the age of twenty-one years, and has resided in this State six months and in the township or ward in which he offers to vote twenty days next preceding such election: Provided, That no qualified elector in the actual service of the United States or of this State, or any student while in attendance at any institution of learning, or any regularly enrolled member of any citizens' military or naval training camp held under the authority of the Government of the United States or the State of Michigan, or any member of the

Legislature while in attendance at any session of the Legislature, or commercial traveler, or any qualified elector employed upon or in the operation of railroad trains in this State, or any sailor engaged and employed on the Great Lakes or in coastwise trade shall be deprived of his vote by reason of his absence from the township, ward or State in which he resides; and the Legislature shall provide by law the manner in which and the time and place at which such absent electors may vote and for the canvass and return of their votes: Provided, further, That the Legislature shall have power to pass laws covering qualified electors who may be necessarily absent from other causes than above specified. Const., III, 1. As Am. at April election of 1917. H. J. R. No. 3.

QUALIFICATION OF ELECTORS: The source of all authority to vote at popular elections is the constitution; the electorate is constituted by the fundamental law; and the qualifications of electors must be uniform throughout the state.—Coffin v. Election Commissioners, 97 / 189; Atty. Gen. v. Abbott, 121 / 545. As to uniformity, see also Atty. Gen. v. Common Council, 58 / 216; Maynard v. Canvassers, 84 / 239. The qualifications of voters at school meetings have never been identical with those of electors as defined in the constitution.—Belles v. Burr, 76 / 1.

TOWNSHIP OR WARD: No one can vote anywhere but in the township or ward where he resides, except as now provided in the case of soldiers.—People v. Blodgett, 13 / 127; People v. Maynard, 15 / 463; Atty. Gen. v. Holihan, 29 / 116; Atty. Gen. v. Common Council, 58 / 213; Warren v. Board of Registration, 72 / 401. For election purposes each ward is made by the constitution equivalent to a township.—Allor v. Wayne Auditors, 43 / 76. The intention of the voter is an important factor in determining residence.—Harbaugh v. Cicott, 33 / 241, 250.

CONSOLIDATION OF TOWNSHIPS: The electors of a disorganized township, the disorganization taking effect one day before the annual township election, have a right to exercise in the new township the franchise possessed by them in the old.—Atty. Gen. v. McColeman, 144 / 67.

385. Residence of Electors.—No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this State, nor while engaged in the navigation of the waters of this State or of the United States or of the high seas, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison; except that honorably discharged soldiers, seamen and marines who have served in the military or naval forces of the United States or of this State and who reside in soldiers' homes established by this State may acquire a residence where such home is located. Const., III, 2.

386. When Soldiers Deemed Not to Be Residents.—No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed in any military or naval place within the State. Const., III, 3.

387. When Women May Vote.—Whenever any question is submitted to a vote of the electors which involves the direct expenditure of public money or the issue of bonds, every woman having the qualifications of male electors who has property assessed for taxes in any part of the district or territory to be affected by the result of such election shall be entitled to vote thereon. Const., III, 4.

388. Electors Privileged from Arrest.—Every elector in all cases, except for treason, felony or breach of the peace, shall be privileged from arrest during his attendance at elections and in going to and returning from the same. Const., III, 5.

389. Militia Duty on Election Day.—No elector shall be obliged to do militia duty on the day of election except in time of war or public danger, or to attend court as a suitor or witness. Const., III, 6.

390. Votes to Be Given by Ballot.—All votes shall be given by ballot, except for such township officers as may be authorized by law to be otherwise chosen. Const., III, 7.

BALLOT: People v. Blodgett, 13 / 143; Belles v. Burr, 76 / 23; Maynard v. Canvassers, 84 / 234; Atty. Gen. v. May, 99 / 547. The object of this provision was to secure the entire independence of the electors, to enable them to vote according to their own individual convictions of right and duty.—People v. Cicott, 16 / 312. The ballot is a constitutional method which cannot be changed.—Atty. Gen. v. Detroit Com. Council, 58 / 213, 217.

CHAPTER I.

DEFINITIONS AND GENERAL PROVISIONS.

391. Michigan Election Law.—This act shall be known and may be cited as the "Michigan Election Law." Act 203 of 1917, Ch. I, Sec. 1.

392. Word "Election" Defined.—The word "election," as used in this act, shall mean, and be held to include, any election (except school elections) at which the electors of the State or of any subdivision thereof choose by ballot public officials or decide any public question lawfully submitted to them. Id., Ch. I, Sec. 2.

393. Words "General November Election" Defined.—The words "general November election," as used in this act, shall mean the election provided to be held in the State on the first Tuesday after the first Monday of November in every even numbered year. Id., Ch. I, Sec. 3.

394. Words "Biennial Spring Election" Defined.—The words "biennial spring election," as used in this act, shall mean the election provided to be held in the State on the first Monday of April in every odd numbered year. Id., Ch. I, Sec. 4.

395. Words "General Election" Defined.—The words "general election," as used in this act, shall mean either the general November election or the biennial spring election. Id., Ch. I, Sec. 5.

GENERAL ELECTION: The general election is not a township meeting in any legal sense.—People v. Knight, 13 / 426. Under the constitution there was only one election which was ever referred to as a general election, and that the term was used as identical with the November election, which was previously annual, and thereby made biennial. That was the only election held simultaneously throughout all the state for officers to represent the whole state.—Westinghausen v. People, 44 / 269. And it is hardly necessary to say that subsequent legislation could not change the meaning or effect of any part of the constitution.—Id. 270. The only foundation for any notion that the spring elections can serve the purpose of the general election mentioned in the constitution is that in organizing the present supreme court in 1857, the statute declared that a "general election" should be held on the first Monday in April every second year for the election of judges. Of course, the legislature can make their own definitions for statuotry purposes, but this would not change the constitutional definition or make it apply to any election not within the constitutional contemplation.—Id. 271. The language of Art. 20, Const. of 1850, taken with all the various other provisions which refer to general elections, very plainly refers to the fall election, and that the practical construction put upon it is correct and binding.—Id. 272. The words "general election" used in the constitution and statute, as applied to the office of judge of probate, can have no other meaning than the biennial election held in November, and an election at any other time to that office must be regarded as a special election.—People v. Palmer, 91 / 283. The term "general election" must be held to mean the November, and not the April election, unless inconsistent with the manifest intent of the legislature.—Edgar v. Election Commissioners, 118 / 418.

See Carton v. Sec'y of State, 151 / 357; Chase v. Election Com'rs of Wayne Co., 151 / 407. The term "general election" means the biennial November election.—People v. Palmer, 91 / 286; Westinghausen v. People, 44 / 268; People v. Lord, 9 / 227. So far as the election of judge of probate is concerned an election at any other time must be regarded as a special election.—People v. Palmer, 91 / 286.

396. Words "Official Primary," Etc., Defined.—The words "official primary" or "official primary election," as used in this act, shall mean a primary election held pursuant to law and conducted by the public officers charged by law with the conducting of general elections. The

words "unofficial primary" or "unofficial primary election," as used in this act, shall mean any other primary or primary election, caucus or convention, held by a political party or organization and conducted by members of such party or organization. Id., Ch. I, Sec. 6.

CHAPTER II.

HOLDING OF ELECTIONS.

397. Time of Holding General November Election.—An election, which shall be known and designated as the "General November Election," shall be held in this State on the Tuesday succeeding the first Monday of November in every even numbered year. Act 203 of 1917, Ch. II, Sec. 1.

398. Officers Elected at General November Election.—At every general November election there shall be elected the following officers:

(1) In the State at large, a governor, a lieutenant governor, a secretary of state, a state treasurer, an auditor general and an attorney general;

(2) In each congressional district a representative in congress;

(3) In each senatorial district, a state senator;

(4) In each representative district, a representative or representatives in the state legislature;

(5) In each county, a sheriff, a clerk, a treasurer, a register of deeds, a prosecuting attorney, a circuit court commissioner or commissioners, a drain commissioner, two coroners and a surveyor. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office or separate the same at pleasure.

The term of office of each such officer shall be two years, beginning on the first day of January next following his election: Provided, That this act shall not be deemed to repeal or modify Act No. 294 of the Local Acts of 1895. Id., Ch. II, Sec. 3.

Act 294 of 1895 above referred to is an act to fix the term of office of the treasurer of Wayne county.

For an act providing for the election of an inspector of mines in certain counties, see § § 5502-15, C. L. of 1915.

For an act providing for the election of county road commissioners, see § § 575-77, C. L. of 1915.

At the general November election in the year 1920, and at the general November election every fourth year thereafter, there shall be elected as many electors of president and vice-president of the United States as this State may be entitled to elect of senators and representatives in congress. Id., Ch. II, Sec. 4.

For an act granting women the right to vote for presidential electors, see Section 580 of this Guide, being Act 191 of 1917.

At the general November election in the year 1918, and at the general November election every sixth year thereafter, there shall be elected one United States senator. At the general November election in the year 1922, and at the general November election every sixth year thereafter, there shall be elected one United States senator. The term of office of United States senator shall be six years, beginning on the fourth day of March next succeeding his election. Id., Ch. II, Sec. 5.

As to method of nomination see § § 227-230, C. L. of 1915.

At the general November election in the year 1920, and at the general November election every fourth year thereafter, there shall be elected in each county a judge or judges of probate for the term of four years, beginning on the first day of January next following his election. Id., Ch. II, Sec. 6.

For an act relative to the election of additional judges of probate, see § 12230, C. L. of 1915.

As to vacancy in office of judge of probate, see Const., VII, 20. See also Secord v. Foutch, 44 / 89; People v. Palmer, 91 / 283.

Probate judges are in no sense county officers.—Donvielle v. Manistee Suprs., 40 / 585.

At every general November election there shall also be elected such other officers as, by law, are now, or hereafter may be, required to be elected at such election. Id., Ch. II, Sec. 6.

399. Time of Holding Biennial Spring Election.—An election, which shall be known and designated as the "Biennial Spring Election," shall be held in this State on the first Monday of April in every odd numbered year. Id., Ch. II, Sec. 2.

400. Officers Elected at Biennial Spring Election.—At each biennial spring election there shall be elected the following officers:

(1) Two justices of the supreme court, each for the full term of eight years, beginning on the first day of January next following his election;

(2) Two regents of the university, each for the term of eight years, beginning on the first day of January next following his election. Id., Ch. II, Sec. 6.

(3) A superintendent of public instruction for the term of two years, beginning on the first day of July next following his election;

(4) A member of the state board of education for the term of six years, beginning on the first day of July next following his election;

(5) Two members of the state board of agriculture, each for the term of six years, beginning on the first day of January next following his election. Id., Ch. II, Sec. 8.

At the biennial spring election in the year 1921, and at the biennial spring election every four years thereafter, there shall be elected a state highway commissioner for the term of four years, beginning on the first day of July next following his election. Id., Ch. II, Sec. 9.

See § 4379, C. L. of 1915.

At the biennial spring election in the year 1923, and at the biennial spring election every six years thereafter, there shall be elected in each judicial circuit a circuit judge or judges, each for the term of six years, beginning on the first day of January next following his election. Id., Ch. II, Sec. 10.

See § § 12083-12122, inclusive, C. L. of 1915.

As to additional circuit judges, see § 12124, as Am. by Act 346 of 1917; § § 12126-29, inclusive; Sec. 46 (a) of Chap. II of the Judicature Act, as added by Act 216 of 1917; and Sec. 46 (b) of said chapter, as added by Act 200 of 1917.

At the biennial spring election in the year 1921, and at the biennial spring election in every fourth year thereafter, there shall be elected in each county a county commissioner of schools for the term of four years, beginning on the first day of July next following his election. Id., Ch. II, Sec. 11.

See § 5878, C. L. of 1915.

At every biennial spring election there shall be elected such other officers as, by law, are now, or hereafter may be, required to be elected at such election. Id., Ch. II, Sec. 12.

401. Township Officers to Be Elected.—In every township there shall be an election on the first Monday of April in each year. In odd numbered years the township elections shall be held at the same time and place and be conducted by the same officers as the biennial spring election. At each such election there shall be elected the following township officers: A supervisor, a township clerk, a treasurer, a justice of the peace, a commissioner of highways, not to exceed four constables, and an overseer of highways for each highway district. The terms of office of township officers, except justices of the peace, shall be one year, beginning as soon as such officers are elected and qualified: Provided, Said township officers shall qualify within ten days after election. The term of office of a justice of the peace shall be four years, beginning the first day of July next succeeding his election. Id., Ch. II, Sec. 13.

As to election of board of review, see Section 793 of this Guide.
As to overseer of highways, see Section 1762.
As to time when term of justice of the peace begins, see Section 1806; as to filling of temporary vacancy, see Section 1807.
As to penalty for failure to qualify see Section 243.
The townships in which elections are held must be organized townships.—People v. Maynard, 15 / 468.
A township election cannot be held in a city within such township.—People v. Knight, 13 / 424.

CHAPTER III.

SPECIAL ELECTIONS.

402. Special Election for Representative in Congress.—The governor shall call a special election in any congressional district of the State in which there has been no choice for a representative in congress at the general November election, or he shall direct that in such case the office shall be filled at the next general election. Act 203 of 1917, Ch. III, Sec. 1.

The governor shall call a special election in any congressional district of the State when the right of office of a person elected representative in congress shall cease before the commencement of the term of service for which he shall have been elected, or whenever a vacancy shall occur in the office of representative in congress after the term of service has begun for which such representative was elected; or the governor shall direct that such vacancy shall be filled at the next general election to be held at least thirty days after such vacancy shall occur. Id., Ch. III, Sec. 2.

403. Special Election for Member of Legislature.—The governor may call a special election in any senatorial or representative district whenever a vacancy shall occur in the office of senator or representative in the State Legislature in that senatorial or representative district; or may direct that such vacancy shall be filled at the next general election held at least thirty days after such vacancy shall occur. Id., Ch. III, Sec. 3.

CHAPTER IV.

FILLING OF VACANCIES IN OFFICE.

404. Township Board to Make Appointments.—Whenever a vacancy shall occur in any township office, except the office of justice of the

peace, it shall be filled by appointment by the township board of the township, and the person appointed shall hold the office for the remainder of the unexpired term. A vacancy in the office of justice of the peace shall be filled at the next annual township election. Act 203 of 1917, Ch. IV, Sec. 6.

The provisions of law relating to vacancies, resignations and removals, are compiled in Part III of this Guide, devoted to Township Officers, being Sections 265 to 274.
As to filling vacancy in office of township treasurer, see Section 1366 of this Guide.
As to filling vacancy in office of member of board of review, see Section 794 of this Guide.

405. Temporary Vacancy in Office of Justice of the Peace.—Whenever a vacancy shall occur, by reason of death, resignation, removal or otherwise, in the office of justice of the peace in this State, the township board of the township or the legislative body of the city shall be empowered to fill such vacancy and such appointee shall hold office by virtue of such appointment only until the next succeeding township or city election. Act 76 of 1917, Sec. 1.

CHAPTER V.

NOTICES OF ELECTION.

406. Election Notices Sent by Registered Mail.—Notices of election required by this act to be given by the secretary of state to county clerks, and by county clerks to township clerks, shall be sent by registered mail, with return receipt demanded. Act 203 of 1917, Ch. V, Sec. 1.

NOTICE: The authorities are uniform that the neglect of the secretary of state, or of the sheriff, or of both of them, to give these notices, would not invalidate an election of persons receiving the highest number of votes for any office for which the regular term was by law to be filled at a general election.—Adsit v. Sec'y of State, 84 / 425; Att'y Gen. v. Canvassers, 64 / 609; Powell v. Com. Council, 51 / 129; People v. Witherell, 14 / 48; People v. Hartwell, 12 / 508. The notice required by the statute in such case is deemed directory and not mandatory. The right and duty to hold the election is derived from the law and not from the notice.—Adsit v. Sec'y of State, 84 / 425; Lindstrom v. Canvassers, 94 / 470. But an election to fill a vacancy, of which no notice was given, and which was in fact known to but few of the voters, is void. But though the official notice was not given, or, if given, not in the prescribed form, yet, if the election has been held, and the great body of the voters had notice in fact of the vacancy, this, coupled with the fact that they are presumed to know that the law requires the vacancy to be filled at the next election, is sufficient, even though many refrained from voting because of a difference in the construction of the law.—Adsit v. Sec'y of State, 84 / 427. See Secord v. Foutch, 44 / 89. The question to be considered in these cases is whether the want of the statutory notice has resulted in depriving sufficient electors of the opportunity of voting to change the result of the election; and the election should not be set aside when it is apparent that the result would not have been different had all the electors voted.—Adsit. v. Sec'y of State, 84 / 420.

407. Notice to Be Given by Township Clerk.—On receipt of a notice of election, from the county clerk, the township clerk of each township shall give at least ten days' public notice of the time and place in his township at which such election is to be held and of the offiees to be filled. Such public notice shall be given by posting written or printed notices in at least three of the most conspicuous places in each election precinct of his township, or by publishing such notice in some newspaper or newspapers published in said township, if any newspaper be published therein. Id., Ch. V, Sec. 6. [Form No. 18.]

CHAPTER VI.

ELECTION PRECINCTS.

408. Township to Be Election Precinct.—When not divided according to law into two or more election precincts, each organized township shall be an election precinct. Act 203 of 1917, Ch. VI, Sec. 1.

409. Precincts to Remain as Established, Until Changed.—The election precincts in the several townships shall remain as established at the time this act takes effect until they shall be changed according to law. Id., Ch. VI, Sec. 2.

410. Division of Township into Election Precincts.—Any township, which constitutes a single election precinct, may, in the discretion of the township board, be divided into two or more election precincts: Provided, That in any township, upon petition of not less than twenty-five qualified electors of said township, the township board shall submit to the electors of said township, at the next election held therein, the question of the division of said township into election precincts as set forth in said petition. If upon such referendum the electors of the township shall decide in favor of such division of the township into such election precincts, the township board shall thereupon make such division and enter the same of record in the proceedings of said township board. When in any election precinct of a township six hundred votes or more shall have been cast at the last preceding election therein; or when from an examination of the registration book, or for any other reason, it shall be evident that there are more than six hundred voters in any precinct, the township board shall, by resolution, divide such precinct into two or more precincts, or shall again divide the township into election precincts, so that there shall not be more than six hundred voters in any one precinct. Id., Ch. VI., Sec. 3.

411. Town Board May Divide Precincts, Etc.—When any township has been divided into two or more election precincts, the township board may, by resolution, divide any precinct thereof into two or more precincts, attach a portion of any precinct to an adjoining precinct or may again rearrange the township into election precincts as said township board may deem necessary and convenient for conducting the elections in said township. Id., Ch. VI, Sec. 4.

412. Board May Abolish Division and Restore Township as Single Precinct.—When any township has been divided into two or more election precincts, pursuant to law, the township board may, by resolution, abolish said division, and thereafter such township shall constitute a single election precinct as if no division had ever been made. Id., Ch. VI, Sec. 5.

413. Changes in Precincts Not to Be Made Within 60 Days of Election.—No subdivision of a township into election precincts; no alteration of the boundaries of, or rearrangement of, election precincts; no abolition of a division of a township into election precincts, as provided in this act, shall be made within sixty days preceding the date of any election or official primary election in such township. Id., Ch. VI, Sec. 6.

414. Notice of Alteration or Abolition.—Whenever a township shall be subdivided into election precincts, or the election precincts thereof shall be altered or rearranged, the township board shall enter said action of record in its proceedings, specifying the numbers of the said precincts, commencing at number one, and describing the boundaries of each precinct. Notice of such subdivision, alteration or rearrangement shall be given forthwith by the township clerk. Such notice shall be posted by said clerk in five or more public places in each of the election precincts affected, or shall be published once in each week for at least

two weeks in some newspaper published in said township, if any be published therein. The said township clerk shall give like notice, by posting or publication, of the abolition of the division of a township into election precincts, and shall in said notice of abolition state that the township is restored as a single election precinct. Id., Ch. VI, Sec. 7. [Forms Nos. 19 and 20.]

CHAPTER VII.

POLLING PLACES AND THEIR EQUIPMENT.

415. Board Shall Designate Place of Holding Elections—The township board in townships shall designate and prescribe the place or places of holding any election in their respective townships, and shall provide a suitable polling place in each precinct of such township for use at each election held therein. Act 203 of 1917, Ch. VII, Sec. 1.

416. Election Shall Not Be Held in Barroom.—No election shall be held, nor shall any election be appointed to be held, in any saloon or barroom, or in any room or place contiguous with or adjoining thereto. Should any place be designated or appointed for holding an election in violation hereof, or become subject to such objection after having been so designated, the inspectors of election shall have power, and it shall be their duty, on or before the day of such election, and before the opening of the polls on such day, to procure a suitable place as near thereto as may be, not subject to like objection. Said inspectors shall meet at the place first designated at the time for opening the poll, and, after any vacancies in their number shall have been filled, adjourn to the place chosen by them, and, at the time of said adjournment, give public notice to the electors present by proclamation of such change, and post in a conspicuous manner notice of the place where such election shall be held, and all expense attending such change shall be certified by said inspectors and paid by the township. Id., Ch. VII, Sec. 4. [Form No. 21.]

See note under Section 466 of this Guide.

417. Intoxicating Liquor at Polling Places.—No person shall have in his possession, on election day, at any polling place, or in any room or place where an election is being held, any intoxicating liquors. No inspector, clerk or gatekeeper at any election shall drink any intoxicating liquors at a polling place or in any room or place where an election is being held, nor shall appear or be at such place in an intoxicated condition. Any person who violates any provision of this section shall, upon conviction, be deemed guilty of a misdemeanor. Id., Ch. VII, Sec. 5.

418. Railing to Be Erected.—The township board in a township shall provide for, and cause to be erected in the room where any election is to be held, in any election precinct of such township, a substantial railing or fence at least three feet in height, which railing or fence shall be placed through and across the room; and such township board shall cause an entrance gate and an exit gate to be erected in said railing. Id., Ch. VII, Sec. 6.

419. Booths to Be Erected.—On the inside of said railing the said officers shall cause one or more booths or temporary rooms to be erected. At least one such booth shall be provided at each polling place, and not

less than one for each hundred persons entitled to vote thereat, as shown by the registration book of the precinct. Each such booth shall be built with walls not less than six feet high and in such manner that the person preparing his ballot shall be concealed from all other persons. In each booth there shall be provided a shelf, of sufficient size, with smooth surface, on which ballots may be placed to be marked. Id., Ch. VII, Sec. 7.

The booths must be so constructed as to secure secrecy to the voter in the preparation of his vote, but so as not to obstruct the view between the public and the voter when he deposits his vote.—Common Council v. Rush, 82 / 533.

420. Gatekeepers at Elections.—The entrance gate shall be in charge of a gatekeeper, who shall be appointed, before the day of election, by the township clerk. Each gatekeeper shall, before entering upon the discharge of his duties, take the constitutional oath of office, which oath any one of the inspectors of election may administer. The township board may, by resolution, provide that there shall be no gatekeeper at a polling place, or may, by resolution, provide that there shall be an additional gatekeeper at the exit gate. Id., Ch. VII, Sec. 8.

No person shall be eligible to fill the office of gatekeeper of election on any election day when his name shall be on any ticket at said election. Gatekeepers of election shall be at the polling place at the opening of the polls, and shall remain there until the closing of the polls, and shall receive such compensation as shall be determined by the township board. Id., Ch. VII, Sec. 9.

421. Duties of Gatekeepers.—The gatekeepers of election shall be peace officers at polling places, and are hereby delegated power equal to that of constables for the purpose of maintaining peace and quiet at the polls on election day. They shall have charge of and keep the gates at polling places, and shall not allow any person other than the election officials and duly authorized challengers and the township, city or village clerk, to enter within the railing during the time of voting, except to vote. They shall allow within the railing at one and the same time, in addition to the electors occupying booths, as many electors applying to vote as there are booths, and the electors shall be admitted in the order in which they shall apply. They shall cause each elector to retire without the railing as soon as he has voted; and said elector shall not again be admitted within the railing. Id., Ch. VII, Sec. 10.

422. Gatekeeper Not to Be Interfered With.—No person shall in any manner interfere with a gatekeeper of election in the discharge of his duty. Id., Ch. VII, Sec. 11.

423. Gatekeeper Not to Aid, Advise, Etc., Elector.—It shall be unlawful for a gatekeeper to aid, assist, suggest, advise or entreat an elector to prepare his ballot in a particular manner, or to coerce or attempt to coerce an elector in any way to vote or to refrain from voting for any particular person or party. Id., Ch. VII, Sec. 12.

424. Clerk Shall Provide Ballot Boxes.—There shall be provided and kept by the township clerk, for each election precinct in a township, at the expense of the township, a sufficient number of suitable ballot boxes, with lock and key, each of which ballot boxes shall have an opening through the lid of the proper size to admit a single closed ballot, through which opening each ballot received shall be passed into the box. Id., Ch. VII, Sec. 13.

425. Clerk Shall Furnish Election Seals.—The township clerk in a township shall also, at the expense of the township, furnish an election seal or sealing device for each election precinct in his township, which seal shall contain the number, if any, of the precinct, the name of the township and the words "election seal." Id., Ch. VII, Sec. 14.

426. Pencils for Election Booths.—The board of election commissioners of each county shall provide, at the expense of the county, for each state, district or county election in said county, as many black or blue lead pencils as may be necessary to supply each election precinct with at least three of such pencils for each booth erected in such precinct. The pencils provided for each precinct shall be enclosed with the official ballots when delivered to the city or township clerk as by law provided. The inspectors of election shall attach such pencils with strings, or in other suitable manner, to the shelf of the booth. The board of election commissioners of each county shall issue a warrant in payment for said pencils, and said warrant shall be paid by the county treasurer out of the general fund of the county. Id., Ch. VII, Sec. 15.

427. Printed Instructions to Voters.—Uniform printed instructions to voters, printed in large type, upon cards, shall be furnished by the secretary of state to the county clerk of each county, containing any information that will assist voters in quickly making and correctly designating their choice, and the county clerks shall deliver such cards to the city and township clerks in the county. City and township clerks shall deliver such cards to each polling place, one of which cards shall be hung in each booth, two in the polling room, and three on the outside of the building in which the voting takes place. Id., Ch. VII, Sec. 16.

For instructions to voters when voting machines are used, see Sections 591 and 602 of this Guide.

428. Copies of Election Law for Inspectors.—The secretary of state shall have a sufficient number of copies of this act printed, prior to each general November election, to supply a copy to each board of inspectors of election in each township, village and city in this State. The clerk of each county shall make requisition upon the secretary of state not less than thirty days prior to each November election for the number of copies required by such county, and such clerk shall deliver to each township, city and village clerk a sufficient number of such copies to supply each board of inspectors with a copy, at the time of furnishing other supplies to boards of inspectors. Id., Ch. VII, Sec. 17.

CHAPTER VIII.

INSPECTORS AND CLERKS OF ELECTION.

429. Three Inspectors in Each Precinct.—At every election there shall be a board of three inspectors of election, constituted as in this chapter provided, in and for each election precinct. Act 203 of 1917, Ch. VIII, Sec. 1.

As to compensation of inspectors of election, see Section 282 of this Guide.

430. Candidates Barred from Being Inspectors.—No person shall act as inspector of any election who is a candidate at said election for election by ballot to any public office. Id., Ch. VIII, Sec. 2.

431. Who to Be Township Inspectors of Election.—In a township which comprises one election precinct only, and in precinct numbered "one" of a township which comprises more than one election precinct, the supervisor, the township clerk, and the justice of the peace whose term of office will first expire, when eligible, shall be the inspectors of election. Id., Ch. VIII, Sec. 3.

In each precinct, other than precinct numbered "one," of a township which comprises more than one election precinct, three electors of such precinct, to be appointed by the township board before each election, shall be the inspectors of election. Id., Ch. VIII, Sec. 4.

See also Section 179 of this Guide.

432. Chairman of Board of Inspectors of Election.—In any township, when the supervisor shall be a member of the board of inspectors of election, he shall be chairman thereof; but if the supervisor is not a member of the board, the inspectors shall designate one of their number as chairman. Id., Ch. VIII, Sec. 5.

433. When Electors May Choose Inspectors.—In case three inspectors shall not attend at the opening of the polls, or shall not remain in attendance during the election, the electors present may choose, viva voce, such number of said electors as, with the inspector or inspectors present, shall constitute a board of three in number; and such electors so chosen shall be inspectors of that election, during the continuance thereof. Id., Ch. VIII, Sec. 6.

434. Clerks of Election to Be Appointed by Board.—There shall be, in and for each election precinct, for each election, two clerks of election, who shall be appointed by the township board in a township, before each election in such township. Whenever, in the judgment of the said township board, more than two clerks are required for the efficient, speedy and proper conducting of an election in any precinct of such township, the said township board shall have authority to appoint one or more additional clerks of such election. Clerks of election shall be qualified electors in the township for which they are appointed. Id., Ch. VIII, Sec. 9.

435. Inspectors and Clerks Shall Take Oath of Office.—Each inspector and each clerk of election shall, before entering upon the discharge of his duties, take and subscribe the oath of office prescribed by the constitution, which oath either of the inspectors may administer. Id., Ch. VIII, Sec. 10.

436. Authority of Inspectors to Maintain Order.—Each board of inspectors of election shall possess full authority to maintain regularity and order, and to enforce obedience to their lawful commands, during an election, and during the canvass of the votes after the poll is closed. Id., Ch. VIII, Sec. 11.

As to power to preserve order at township meetings, see Section 188 of this Guide.

437. Election Officers May Vote in Precinct Where They Act.—Every inspector of election, clerk of election and gatekeeper of election in any township shall have the right to vote in the precinct where he acts as such election officer, even though he resides in another election precinct of the same township. Id., Ch. VIII, Sec. 12.

CHAPTER IX.

PREPARATION, PRINTING AND DELIVERY OF OFFICIAL BALLOTS.

438. County Board of Election Commissioners.—In each county of the State the judge of probate, county clerk and county treasurer shall constitute a board of election commissioners, two of whom shall be a quorum. Act 203 of 1917, Ch. IX, Sec. 1.

439. Officers of Board; Filling of Vacancies Thereon.—The judge of probate shall be chairman of the board of election commissioners, and the county clerk shall be secretary of said board. In the event of the absence of the county clerk from any meeting of the board of election commissioners, the board may select one of his deputies to act in his stead. In the event of the absence of any member of the board of election commissioners other than the county clerk, the members of the board who are present shall appoint some other county officer in his place, and such county officer, on being notified, shall attend without delay and act as a member of said board. Id., Ch. IX, Sec. 2.

440. Party Vignette.—The state central committee of each political party or organization in this State shall prepare and adopt, by engraving or otherwise, a vignette, to be printed at the top of the column of the official ballot assigned to such party, as a distinctive and characteristic heading thereto. Such vignette shall not be more than one and one-half inches square, and in addition to the device adopted shall set forth legibly the name of such party. Id., Ch. IX, Sec. 3.

VIGNETTE: But one vignette is provided for, but the placing of a separate vignette at the head of the county ticket, while an irregularity, is not fatal. A voter cannot be disfranchised, nor a candidate who is not shown to have participated in any fraud, be defeated of his election, by such an irregularity.—Lindstrom v. Canvassers, 94 / 467. Where the vignette adopted combines with it the name of the party or political organization represented by the committee forwarding it to the commissioners, it is unnecessary to put another heading below it.—Shields v. Jacobs, 88 / 164.
See Baker v. Election Com'rs, 110 / 635.

441. State Committee to Forward Names of Candidates.—Not less than thirty days prior to any general election the state central committee of each political party shall forward to the board of election commissioners of each county, in care of the county clerk, at the county seat, and to the secretary of state, a copy of the vignette adopted by said state central committee and the typewritten or printed names, together with residence, including the street address if known, of all candidates nominated at any regularly called state convention or conventions at which candidates for any of the offices to be filled at such election shall be nominated. All the names of candidates so nominated shall be certified to by the chairman and secretary of the respective committees. It shall not be necessary for any party committee to certify nominations made at an official primary election. Such vignette and heading shall remain as the heading for the column of such party organization on the ballots at all elections until changed by the proper committee, and notice thereof shall have been given to such county clerks and secretary of state. It shall be the duty of the board of election commissioners of each county to provide, at the expense of the county, a sufficient number of cuts of the several vignettes provided for in this act, for use in printing the official ballots for any state, district or county election in said county. Id., Ch. IX, Sec. 4.

442. Certificates of Nominations to Be Delivered to County Board.—All certificates of nomination required to be made to the board of election commissioners of any county shall be delivered to the county clerk, or forwarded to him by registered mail, with return receipt demanded, and such county clerk shall deliver such certificates to the county board of election commissioners at its first meeting thereafter. Id., Ch. IX, Sec. 6.

443. County Board to Prepare Ballots for State, District and County Elections.—The board of election commissioners of each county shall prepare the official ballots for use at any state, district or county election held therein, and shall have printed a sufficient number of ballots, containing the names of all candidates properly certified to said board of election commissioners, and ballots for all proposed constitutional amendments or other questions to be submitted at such election, to supply each election precinct in such county with a sufficient number for such precinct, and not less than twenty-five per centum more of each kind of ballot than the number of votes cast in said precinct at the last preceding general November election for the office of secretary of state. Id., Ch. IX, Sec. 7.

See Peck v. Suprs., 102 / 355.
The board cannot print upon the ballot the name of a candidate not nominated by an assemblage or meeting of electors.—Chateau v. Jacobs, 88 / 171.

444. Preparation of Official Ballots.—The said board of election commissioners shall cause to be printed on the ballot (or ballot labels or slips to be placed on a voting machine, when used) the names of the candidates certified to said board pursuant to this act; but the name of no candidate shall be placed or printed in more than one column on the ballot for the same office. Any person who receives the nomination for the same office by two or more parties or political organizations shall, within five days after his name has been certified to said election commission as having been nominated by two or more political parties for the same office, give notice to the board of election commissioners of each county in the State, if said nomination be for a State office; to the board of election commissioners for each county in the district, if said nomination be for a congressional, judicial or legislative office, and to the board of election commissioners of the county, if such nomination be for a county office; specifying in such notice the column of which party or political organization on the ballot or voting machine he wishes his name to be printed or placed. Said board of election commissioners shall print or place the name of such candidate in such column on the ballot so specified by him, and in no other column. Such notice shall be given to said election commissioners by delivering the same either in person or by depositing the same in the post office in a sealed envelope, with postage prepaid, directed to the county clerk at the county seat of the respective counties. In case any such candidate, so nominated by two or more parties or political organizations for the same office, and whose name shall have been certified pursuant to law to the said board of election commissioners, shall refuse or neglect to give notice to said board of election commissioners as above provided, and within the time above named, the said board of election commissioners shall cause his name to be printed or placed in the column of the party or political

organization, on whose ticket he received the greater number of votes at the official primary election, if the office be one candidates for which are required by law to be nominated at an official primary election; and, if not, then in the column of the party or political organization from the chairman and secretary of whose committee said board of election commissioners shall have first received notice of such person's nomination for said office: Provided, That where a person has received the nomination for the same office by two or more parties and has filed a nominating petition for said office on one of said political parties, he shall not be permitted to select in conformity herewith which nomination he accepts, but shall accept the nomination for said office on the party for which he shall have filed said petition. All the provisions of this section shall also apply to all city, village and township elections held in this State, except that the notice herein required to be given by a candidate shall, in case of a city, village or township office, be given by him to the proper city, village or township board of election commissioners within two days after his name has been so certified as nominated by two or more political parties for the same office. Id., Ch. IX, Sec. 8.

As to printing of ballot labels for voting machines, see Section 588 of this Guide; for primaries, Section 618.

445. Death or Withdrawal of Candidate Before Printing of Ballots.—When any candidate of a political party, after having been nominated for any office, shall die or shall withdraw as herein provided as such candidate before the printing of the official ballots, a candidate to fill the vacancy thereby caused shall be selected by the State, district, county, city, village or township committee of such party, as the said office shall be one to be filled by the voters of the State at large or by the voters of a district, county, city, village or township: Provided, That where a candidate has filed a nominating petition on any political party for any office and has been nominated for said office by said party, he shall not be permitted to withdraw unless he has removed from the State, district, county, city or village, as the case may be, or by virtue of death or physical disability, and no vacancy shall be filled by the State, district, county, city, village or township committees except for the causes herein specified: Provided, further, That this prohibition shall not be construed to prohibit the withdrawal of any candidate who has been nominated without having filed a nominating petition and who has had his name written in on any political party. The name of the candidate so selected shall be certified by the chairman and secretary of said committee to the board or boards of election commissioners, whose duty it is to prepare the official ballots containing the names of candidates for such office. The proper board or boards of election commissioners shall cause to be printed or placed upon such ballots in its proper place the name of the candidate so selected and certified to fill such vacancy. Id., Ch. IX, Sec. 9.

446. Candidates for Federal, State, District and County Offices to Be Printed on One Ballot.—The board of election commissioners in each county shall cause the names of all candidates for federal, state, district and county offices at any election, to be printed on one ballot, separate from any other ballot. The names of all candidates of each political party shall be placed in a separate column on said ballot, under the name

and vignette of such party, with the name of each candidate opposite the name of the office for which he was certified to have been nominated. Id., Ch. IX, Sec. 10.

447. Order of Names at General November Election.—At the general November election the names of the several offices to be voted for shall be placed on the ballot substantially in the following order: Electors of president and vice-president of the United States, governor, lieutenant governor, secretary of state, state treasurer, auditor general, attorney general, United States senator, representative in congress, senator and representatives in the state legislature, judge of probate, sheriff, clerk, treasurer, register of deeds, prosecuting attorney, auditor in counties electing an auditor, circuit court commissioners, drain commissioners, coroners, surveyor. Id., Ch. IX, Sec. 11.

448. Order of Names at Biennial Spring Election.—At the biennial spring election the names of the several offices to be voted for shall be placed on the ballot in the following order: Justices of the supreme court, regents of the university, superintendent of public instruction, member of the state board of education, members of the state board of agriculture, state highway commissioner, circuit judge, county commissioner of schools: Id., Ch. IX, Sec. 12.

449. Placing of Name of Candidate to Fill Vacancy.—The name of a candidate to fill vacancy in any office shall be placed in the appropriate place on the ballot, regard being had to its being a state, congressional, legislative or county office. Id., Ch. IX, Sec. 13.

450. Position of Party Ticket on Ballot.—The ticket of the party having the greatest number of votes in the State at the last preceding November election, as shown by the votes cast thereat for secretary of state, shall be placed first on the ballot, the position of other party tickets to be governed relatively by the same rule. Id., Ch. IX, Sec. 14.

See Section 440 of this Guide and notes thereunder.
The provisions as to arranging the tickets on the ballots are not merely directory, but must be observed in making up the ballot.—Baker v. Com'rs., 110 / 635.

451. Arrangement of Ballot; Instructions.—The arrangement of the ballot containing names of candidates for office shall conform as nearly as possible to the following plan, and shall contain the specific instructions therein set forth, and no others:

OFFICIAL BALLOT.

(Instructions.) In all cases make a cross (X) in the circle (O) under the name of your party at the head of the ballot. If you desire to vote a straight ticket, nothing further need be done. Where only one candidate is to be elected to any office, and you desire to vote for a candidate not on your party ticket, made a cross (X) in the square [ ] before the name of the candidate for whom you desire to vote on the other ticket. Where two or more candidates are to be elected to the same office, and you desire to vote for a candidate or candidates not on your party ticket for such office, make a cross (X) in the square [ ] before the name of the candidate or candidates for whom you desire to vote on the other ticket; also erase an equal number of names of candidates on your party ticket for the same office. If you wish to vote for a candidate not on any ticket, write or place the name of such candidate on your ticket opposite the

name of the office. Before leaving the booth, fold the ballot so that the initials of the inspector may be seen on the outside.

NAMES OF OFFICERS VOTED FOR.	Vignette with Name of Party. O	Vignette with Name of Party. O	Vignette with Name of Party. O
PRESIDENTIAL. *Electors of President and Vice-President.*	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
STATE.			
Governor.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
Lieutenant Governor.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
Secretary of State.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
CONGRESSIONAL.			
United States Senator.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
Representative in Congress, ...*District*.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
LEGISLATIVE.			
Senator.....*District*.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
Representative.....*District.*	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
COUNTY.			
Judge of Probate.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
Sheriff.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.
Clerk.....	☐ Name of candidate.	☐ Name of candidate.	☐ Name of candidate.

Id., Ch. IX, Sec. 15.

452. Ballots for Submitted Questions.—Whenever any proposed constitutional amendment or other question is to be submitted to the electors, the board of election commissioners of each county shall cause each such proposed constitutional amendment or other question to be printed on a ballot separate and distinct from the ballot containing the names of nominees for public office, the substance of each amendment or other question to be clearly indicated upon said ballot by a suitable designation in distinct and easily legible type, with the words "Yes" and "No" printed below it in separate lines. Id., Ch. IX, Sec. 16.

It is not a sufficient compliance with the constitutional requirement of separate ballots to print five proposed amendments on one voting slip or ticket.—Livingstone v. Wayne Com'rs., 174 / 485.

453. Ballots of Each Kind to Be of Uniform Size, Etc.—The ballots of each kind shall be of uniform size and of the same quality and color of white paper, and sufficiently thick that the printing cannot be distinguished from the back, and the ballots of each kind in each election precinct shall be numbered consecutively on the upper right-hand corner of the front side thereof, and no two ballots of the same kind in the same election precinct shall have the same number. The ballots shall be perforated diagonally across the upper right-hand corner, so that the corner, containing the number, can be readily torn off, as hereinafter provided, before such ballot is deposited in the ballot box. Id., Ch. IX, Sec. 17.

454. Proof Copy of Ballot to Be Filed.—The county board of election commissioners shall place on file at the office of the county clerk, at least twenty days prior to any election, proof copy of the official ballot containing the names of candidates for public office to be voted for at such election, and such proof copies shall be open for public inspection. Id., Ch. IX, Sec. 18.

The failure to have the proof copy of the ballot on file for inspection is an irregularity which will not disfranchise a voter or deprive a candidate of his election, if he is not shown to have participated in any fraud.—Linstrom v. Canvassers, 94 / 467.

455. Proof Copy of Ballot to Be Sent to Each Candidate.—At the time of filing the proof copy of the ballot at the office of the county clerk, the county board of election commissioners shall send by registered mail, with return receipt demanded, a proof copy of the official ballot to each candidate whose name appears on said ballot, at his last known address: Provided, That said candidate shall, if he desires to correct said ballot, return the same to said county clerk within three days of the receipt of same. They shall also send, by first-class mail, a proof copy of such official ballot to each inspector of election for each of the election districts of their respective counties, with instructions enclosed as to the proper method of initialing of such ballots by said inspectors, as provided by section five of chapter ten of this act. It shall be the duty of each inspector, elected or appointed, to initial said ballot in accordance with law, with his own initials and return same to the county clerk. Upon examination of such ballot, if the county clerk shall find that such inspector has not properly placed his initials upon said ballot, he shall send a communication to said inspector calling attention to the incorrect manner in which he has performed his work and instructing him personally as to the proper method for such initialing, the intent

and purpose of this provision being to prevent the voiding of ballots, due to the same being incorrectly initialed. Id., Ch. IX, Sec. 19.

456. Correction of Errors in Official Ballot.—The board of election commissioners shall correct such errors as may be found in said ballot by the inspections provided for herein. Id., Ch. IX, Sec. 20.

457. Death or Withdrawal of Candidate After Printing of Ballots.—In case of the death, removal or withdrawal, as in this act provided, of any candidate after the printing of such ballot, and before such election, the chairman of the State, district or county committee of the political party to which such candidate belongs shall transmit to the chairman of the board of election commissioners the name of the person selected by such party to fill such vacancy, and said board shall provide the election board of each precinct, in which such candidate is to be voted for, with a number of pasters, containing only the name of such new candidate, at least equal to the number of ballots provided for such precinct, but no pasters shall be given to, or received by any one, except such election board and such chairman, and it shall be the duty of the chairman of the board of inspectors of election to cause to be put one of such pasters, in a careful and proper manner, in the proper place on each ballot before it shall be given to any elector for the purpose of voting. In case the name of any candidate regularly certified to said board of election commissioners shall have been omitted from such ballots, or in case it is found that a mistake has been made in the printing of the name of any candidate on said ballot, said board of election commissioners shall furnish pasters containing the name of such candidate and the same shall be placed upon the ballots as herein provided in the case of a candidate selected to fill a vacancy. Id., Ch. IX, Sec. 21.

SLIPS PASTED: Slips over names on ballot, when void. Where a slip is so placed on a ticket as to leave on it two distinct names as candidates for the same office, the ballot is rendered bad as to that office for duplicity. But where an attempt is made to cover one name by another for the same office, so that the under one is partially obliterated, the slip will be counted although the name beneath is not entirely covered.—The People v. Cicott, 16 / 283. Where a slip is pasted over a name so as to partially obliterate it, the slip should be counted. —Keeler v. Robertson, 27 / 117.

458. Packages of Ballots to Be Delivered to County Clerk.—The county board of election commissioners shall cause the ballots required for any regular or special election or official primary election in such county, wrapped and tied as herein required, to be delivered to the county clerk at the earliest possible time after the approval of the proof thereof, and at least twelve days before the day of election. Id., Ch. IX, Sec. 22.

459. How Packages Shall Be Wrapped, Sealed and Marked.—The ballots of each kind for each election precinct shall be wrapped and tied in two separate packages. Each such package shall be securely sealed with wax and shall bear on its wrapper the name and number, if any, of the precinct, and a certificate signed by the county clerk or some member of the county board of election commissioners, setting forth the number of ballots in such package and that such ballots were counted, packed, and sealed by himself personally. For the safe sealing of such ballots the county board of election commissioners shall provide themselves with a seal of such design as they may deem proper. Ten per cent of the total number of ballots of each kind to which each precinct is entitled,

together with such additional number as the county clerk, upon a proper showing by the respective township or city clerks, may deem to be necessary, beginning with ballot number one, and including the consecutive numbers thereafter, shall be enclosed in one package, as many as are necessary thereof to be used for absent voters as provided by law. Each such package shall be plainly marked on the outside, "Absent Voter Ballots." The remainder of each kind of ballots for such precinct shall be enclosed in a second package, sealed as above provided. Id., Ch. IX, Sec. 23.

460. Ballots and Election Supplies to Be Delivered to Town Clerk.—The county clerk of each county, at least twelve days before any election in such county, shall cause to be delivered to the township clerk of each township and to the city clerk of each city in his county, the ballots and the other election supplies for such township or city, taking the township or city clerk's receipt therefor. Id., Ch. IX, Sec. 24.

461. Town Clerk May Open Packages of "Absent Voter" Ballots.—The said township or city clerk shall have the right to open the package or packages of absent voter ballots received by him for any precinct in his township or city, provided he shall receive application for absent voter ballots from any qualified elector of such precinct, but not otherwise. He shall in no case open any of the other packages of official ballots but shall keep them intact in some safe and secure place, and shall deliver them, together with the absent voter ballots remaining in his possession, and other election supplies, to the chairman or some member of the board of inspectors of election of the proper precinct or precincts of his township or city, as the case may be, before seven o'clock in the forenoon of the day of election. On delivery of said ballots to the chairman or some other member of the board of inspectors of election, said clerk shall take a receipt therefor, which receipt he shall file in his office. The absent voter ballots so delivered shall be the first ballots issued by said board of inspectors of election to electors offering to vote at the election. Id., Ch. IX, Sec. 25.

462. Township Board of Election Commissioners Shall Provide Ballots for Township Election.—The township, city or village board of election commissioners, as the case may be, shall cause the ballots required for any regular or special township, village or city election, or official primary election for the nomination of candidates for city or ward offices, to be printed and delivered to the township, village or city clerk, as the case may be, at least twelve days before any such election, and like duties as are hereinbefore enjoined upon county boards of election commissioners and upon county, township and city clerks relative to the counting, packing, sealing and delivery of official ballots, are hereby enjoined upon the several township and municipal boards of election commissioners and upon the several township, village or city clerks relative to the counting, packing, sealing and delivery of official ballots for use in each precinct of such township, village or city at any such municipal or township election. Id., Ch. IX, Sec. 26.

463. Instruction Ballots May Be Printed.—It shall not be lawful for the printer of official ballots for use at any election, or any other person, to give or deliver any of said ballots to, or knowingly permit any of said ballots to be taken by, any person other than the board of election com-

missioners, for which such ballots are being printed; or to print, or cause or permit to be printed any ballot in any other form than the one prescribed by this act, or with any other name thereon, or with the names misspelled, or the names or devices therein arranged in any other way than that authorized and directed by the said board of election commissioners; but it shall be lawful for the chairman of committees and candidates named on the official ballot to procure any number of facsimiles of the ballot to be printed on red, yellow or blue paper and to circulate the same for the purpose of the instruction of voters. Said colored facsimiles shall have printed at the head the words "Instruction Ballot." Id., Ch. IX, Sec. 27.

As to instruction ballots when voting machines are used, see Section 590 of this Guide.

464. Duties of Township Board of Election Commissioners.—The township board of each township shall be the board of election commissioners for township, and shall perform such duties relative to the preparation, printing and delivery of ballots as are required by law of the boards of election commissioners of counties. Like duties and privileges as are enjoined and granted by this act upon and to the various committees of the different political organizations are hereby prescribed for township committees in matters pertaining to any township election except that it shall not be necessary for a township committee of a political party or organization to furnish a vignette or heading for the ballots other than to designate the name of the party or political organization which they represent. In townships the names of candidates for township offices shall be given by the committees of the various political organizations to the board of election commissioners of such township not less than eighteen days before each election, but it shall not be necessary for any party committee to give to the board of election commissioners the name of any candidate nominated at an official primary election. The proof copy of the ballot shall be open to public inspection at the office of the township clerk, not less than fifteen days before such election. Id., Ch. IX, Sec. 28.

465. Caucuses, Conventions and Primaries Must Be Held Twenty Days Before Election.—All caucuses, conventions or primary elections held for the purpose of nominating candidates to be voted for at any election shall be held at least twenty days before such election and in sufficient time so that the ballots may be printed and in the hands of the various county, township, village or city clerks, as the case may be, at least twelve days before election. Id., Ch. IX, Sec. 29.

See also § § 15179-15187, C. L. of 1915.

CHAPTER X.

CONDUCT OF ELECTIONS AND MANNER OF VOTING.

466. Opening and Closing Polls.—On the day of any election the polls shall be opened at seven o'clock in the forenoon, or as soon thereafter as may be, and shall be continued open until five o'clock in the afternoon and no longer: Provided, That in townships the board of inspectors of election may, in its discretion, adjourn the polls at twelve o'clock noon, for one hour, and that the township board in townships and the legis-

lative body in cities and villages may, by resolution, adopted fifteen days prior to the election and published with the notice of the election, provide that the polls shall be kept open until eight o'clock in the evening of the same day and no longer. Act 203 of 1917, Ch. X, Sec. 1.

As to irregularities in opening and closing the polls, see People v. Cicott, 16 / 305, 324.
CONDUCT OF ELECTIONS: Statutory provisions prescribing the conduct of elections are to be regarded as directory only, except where they are of such a character that a failure to comply with them would have the effect to prevent or obstruct the complete expression of the popular will or the production of satisfactory evidence thereof.—People v. Cicott, 16 / 323 (Cooley, J.). See People v. Sackett, 14 / 320; Lindstrom v. Canvassers, 94 / 469. As to statutory provisions requiring notices of elections, see People v. Witherell, 14 / 48; People v. Hartwell, 12 / 508; Secord v. Foutch, 44 / 92. Irregularities on the part of election officers do not necessarily defeat the election, but may require it to be subjected to rigid scrutiny.—People v. Sackett, 14 / 320. An election is not to be set aside because of an irregularity, unless it appears that that irregularity affected the result.—People v. Cicott, 16 / 324. (Cooley, J.). Even where the statutory provisions disregarded are mandatory, the irregularity does not necessarily defeat the election, if the means exist of determining the result.—Id.; People v. Van Cleve, 1 / 362; People v. Higgins, 3 / 233; People v. Bates, 11 / 362; Keeler v. Robertson, 27 / 116. Illegal votes will not be allowed to affect the result, except where it can be shown for whom they voted.—People v. Cicott, 16 / 283. As to irregular adjournment of the election from one place to another, see Farrington v. Turner, 53 / 27. As to certain other irregularities, see People v. Avery, 102 / 572.

467. Proclamation of Opening and Closing Polls.—The inspectors of election shall cause proclamation to be made upon opening the polls, and shall cause proclamation to be made of the closing of the polls one hour, thirty minutes and fifteen minutes, respectively, before closing thereof. Id., Ch. X, Sec. 2.

468. Examination and Locking of Ballot Boxes.—Before opening the polls each ballot box to be used at the election shall be examined by the board of inspectors of election, and the contents, if any, removed therefrom; it shall then be locked, and the key thereof delivered to one of the inspectors, to be designated by the board. The said box shall not be opened during the election, except as provided by law in case of adjournments. Id., Ch. X, Sec. 3.

469. Opening of Packages of Ballots, Etc.—At the opening of the polls, after the organization of and in the presence of the board of inspectors, one of the inspectors shall open the packages of ballots in such a manner as to preserve the seal intact. He shall then place in the booths the pencils to be used for marking ballots. The unused absent voter ballots shall be the first used by the board of inspectors of election. Id., Ch. X, Sec. 4.

470. Initialing of Ballots.—All official ballots before being delivered to electors applying to vote shall be initialed in the manner hereinafter set forth. At the opening of the polls the board of inspectors of election shall direct one of the inspectors or clerks of election to initial a supply of ballots; and such inspector or clerk shall proceed to write his initials, in ink or with indelible pencil, in his ordinary handwriting and without any distinguishing mark of any kind, or he shall, with a facsimile signature, using indelible ink, stamp his initials on the back of each ballot, directly below the perforated line, so that the initials shall not be torn off when the corner of the ballot containing the number is torn off before ths ballot is deposited in the box. The said inspector or clerk shall not write or stamp his initials on the ballots which bear the initials of the city, township or village clerk. As the supply of initialed ballots shall decrease, additional ballots shall be initialed by an inspector or clerk, so that there shall be a supply of each kind of ballots, so initialed, at all times on hand for delivery to electors applying to vote. Id., Ch. X, Sec. 5.

DESIGN OF ACT: This act (act 190 of 1891), is designed to secure absolute secrecy to the elector and thus prevent all opportunity for corrupt practices.—Att'y Gen. v. McQuade, 94 / 443; Att'y Gen. v. May, 99 / 544. It was passed to preserve the purity of elections and, although it may result in some inconvenience to the voter, the restrictions placed upon the manner of voting and the regulations, under which votes may be received and placed in the ballot boxes, are within the province of the legislature.—Att'y Gen. v. May, 99 / 547.

INITIALING BALLOTS: The provisions of this law do not authorize the rejection by the canvassers of ballots, inadvertently indorsed by the inspector in the lower right-hand corner; so much of the statute as designates the particular place for the indorsement being directory only.—Horning v. Board of Canvassers of Saginaw Co., 119 / 51. See DeGaw v. Fitzsimmons, 124 / 511.

The indorsement of the initials was made in all respects as required by law, except that, instead of being in the upper left-hand corner, they were in the lower right-hand corner. The inspectors of election did not intend to do any wrong. The electors were all qualified voters. They accepted the ballots as given them by the inspector, supposing them to conform fully with the law. As voted, they were secret ballots. The electors voted them in the utmost good faith, without objection or challenge from anyone. The inspectors counted them without protest from any one. The electors were in no sense responsible for the mistake of the inspector. To disfranchise hundreds of legal voters, for an unintentional mistake of this character by a public officer, is a gross injustice, and is calculated to bring a very commendable law into disrepute. It would enable a corrupt inspector to disfranchise the electors when they were not parties to the fraud.—Horning v. Board of Canvassers, 119 / 60.

471. To Whom Ballots May Be Delivered.—Except as provided in this act relative to absent voters, no ballot shall be delivered by any person other than one of the inspectors of election, nor in any place except within the railing of the voting room, to an elector about to vote. Id., Ch. X, Sec. 6.

MISCONDUCT OF INSPECTORS: In determining the title to a county office, the vote of a township should be excluded, where it appears that in such township the mandatory provision of the election law requiring the official ballots to be kept in the custody of an inspector was violated by the appointment of an unofficial person as "instructor" to distribute the ballots, and allowing him access to the voters even after they had entered the booths, although the parties acted in good faith and it is not shown that voters were unduly influenced. —Att'y Gen. v. Kirby, 120 / 592.

472. Challenged Votes; Oath Administered.—If any person offering to vote shall be challenged as unqualified by any inspector, or any elector qualified to vote at that poll, he shall be sworn to answer truthfully all questions put to him touching his qualifications as an elector. Any one of the inspectors may administer the oath to a person whose vote has been challenged. Any inspector or qualified voter at that poll may question said person as to his constitutional qualifications as an elector. If the answers to questions put to such person shall show that he is a qualified voter at that poll, his ballot shall be received; otherwise not. If any one of his answers concerning a material matter shall not be true, he shall, on conviction, be deemed guilty of perjury. Id., Ch. X, Sec. 7.

As to challenging electors in townships, see Sections 187 and 199 of this Guide.

RESIDENCE: The temporary absence of a person or his family, though extending over a series of years, does not necessarily, without regard to his intentions, make him lose his residence, or deprive him of his rights as an elector.—Harbaugh v. Cicott, 33 / 242.

ELECTIVE FRANCHISE: It must be remembered that the right of voting is one which cannot be taken away by direct law or impossible conditions.—Warren v. Board of Registration, 72 / 399.

OATHS: Where, by the law under which an election is held, the inspectors are to receive the voter's ballot if he takes the oath that he possesses the constitutional qualifications, the oath is the conclusive evidence on which the inspectors are to act, and they are not at liberty to refuse to administer it, or to refuse the vote after the oath has been taken.—Wolcott v. Holcomb, 97 / 361; People v. Cicott, 16 / 302.

473. When Inspector Shall Challenge Voter.—Each inspector shall challenge every person applying for a ballot whom he shall know or suspect not to be a qualified elector in that precinct or opposite whose name in the registration book the word "Challenge" shall be written.—Id., Ch. X, Sec. 8.

474. Two Poll Lists to Be Kept.—At every election two poll lists shall be kept, each by a clerk or inspector of election. Each such clerk or inspector shall enter upon the poll list kept by him the names of all

electors who are given official ballots, and shall, at the time of entering each such name, place on the same line, and immediately following said name, the number of the ballot or ballots given such elector. The names of electors shall be entered on the poll lists in the order in which such electors are given ballots: Provided, That the name of an absent voter and the number of his ballot shall be entered on the poll lists at the time his marked ballot or ballots are taken by the inspector from the sealed envelope, as provided by law. Id., Ch. X, Sec. 9.

475. Delivery of Ballots to Elector Applying to Vote.—When an elector applying to vote shall not be challenged, or, having been challenged, shall have taken the necessary oath or affirmation, he shall be permitted to vote. The inspector having charge of the ballots shall deliver to said elector one of each kind of said ballots to be voted at the election. All the ballots so given to an elector applying to vote shall bear the same number, beginning, for the first elector to whom ballots are given, with the lowest numbered initialed ballots, the next higher number for the second such elector, and so on. On request of the elector an inspector may give explanation of the manner of voting, and, if by the board deemed necessary, an interpreter may be called. Id., Ch. X, Sec. 10.

INTERPRETER: The interpreter cannot be allowed to remain within the railing to converse with the voters who do not understand English.—Att'y Gen. v. Stillson, 108 / 419.

476. Manner of Marking Ballots.—The elector shall then go directly into a booth which is unoccupied and indicate on the proper ballot the candidate or candidates for whom he desires to vote, as follows:

(1) If the elector desires to vote a straight ticket he must make a cross (X) in the circle under the name of his party at the head of the ballot. Nothing further need be done.

(2) Where only one candidate is to be elected to an office and the elector desires to vote for a candidate not on his party ticket, he should make a cross in the circle under the name of his party, and also make a cross in the square before the name of the candidate for whom he desires to vote on the other ticket. In such case it shall not be necessary to strike off the name of the candidate on his party ticket. If the elector votes for more than one candidate for the same office, where only one candidate is to be elected to said office, said ballots shall not be counted for either of such candidates, but shall be as to them null and void.

(3) When two or more candidates are to be elected to the same or like office, such as circuit court commissioners, presidential electors, etc., and the voter desires to vote for a candidate or candidates not on his party ticket for such office, he must mark a cross in the circle under his party name, and mark a cross in the square before the name or names of the candidate or candidates for whom he desires to vote on the other ticket or tickets, and also erase an equal number of names of the candidates for such office on his party ticket; but if such elector shall not cross off the names of an equal number of candidates for such office on his party ticket he shall be deemed to have crossed off the name of each candidate for such office which is printed on his party ballot opposite the name of the candidate on some other party ticket in front of which name he has made a cross (X).

(4) If the elector wishes to vote for a candidate not on any ticket, he must write or place the name of such candidate on his ticket, opposite

the name of the office, and make a cross in the circle under the party name.

(5) A ticket marked with a cross in a circle under a party name shall be deemed a vote for each of the candidates named in such party column whose name is not erased, except those candidates where a cross is placed in the square before the name of some opposing candidate on the opposing ticket, or when there is written or pasted on the party ticket a name which is not printed on any party ticket.

(6) If the name of any person who is not a candidate on any ticket is written or placed on the party ticket opposite the name of the office, and there is a cross in the circle under the party name, the name so written or placed shall be counted one vote for such person, whether the original name on the party ticket is erased or not, excepting cases where there is a cross in the square before the name of some opposing candidate on some other party ticket.

(7) If no cross is placed in the circle under the party name, a cross in the square before the name of any candidate shall be deemed a vote for such candidate except in cases where the elector votes for more candidates for the same office than are to be elected.

(8) Such elector shall indicate his preference on any constitutional amendment or other submitted question, by making a cross (X) in the square in front of the word "Yes" or in the square in front of the word "No" opposite or below such question on the proper ballot. Id., Ch. X, Sec. 11.

ENTERING BOOTH ALONE: The provisions of this section requiring the elector to enter the booth alone and prepare his ticket are mandatory.—Att'y Gen. v. McQuade, 94 / 439.

MARKING BALLOTS: Ballots were all marked with a blue pencil in the circle at the head of the ticket. In one instance, it looks as though the voter first made a cross, and, thinking he had not marked it plainly enough, repeated the marking substantially over the first marking. Two other tickets looked as though they might have been made with a blue pencil the lead of which was so broken that two points projected so as to make marks upon the ballot; or the voter may have made the cross with a down and up-stroke in making each mark. There is nothing in the marking to distinguish the ballot from other ballots. If these ballots are to be rejected, the ballots of a large number of voters who do not have occasion to use pen and pencil very often would have to be rejected.—People v. Kamps, 129 / 217. A ballot marked with two parallel horizontal lines across the circle at the head of one of the party tickets cannot be counted, the statute requiring a cross as the designation of the voter's intent.—Christopherson v. Com. Council, 117 / 125.

477. Folding and Delivery of Ballots.—Before leaving the booth the elector shall fold his ballot or each of his ballots so that no part of the face thereof shall be exposed, and so that the initials of the inspector or clerk of election or township, village or city clerk shall be on the outside thereof, and on leaving the booth shall at once deliver in public view such ballot or ballots to the inspector designated to receive the same, who shall thereupon announce audibly the name of the elector offering the same, and the number of each ballot, and shall ascertain by comparison of the number of the ballot with the number of the ballot given such elector as shown by the poll list whether the ballot presented is the same one given such elector. If it is not the same ballot given said elector it shall be rejected. If it is the same ballot given the elector the inspector shall tear off the corner of the ballot, where perforated, containing the number, and shall then, in the presence of the elector and the board of inspectors, deposit, without opening, the ballot or each of said ballots in the proper ballot box: Provided, however, If any elector shall show his ballot or any part thereof to any person other than one lawfully assisting him in the preparation thereof, after the same shall have

been marked, so as to disclose any part of the face thereof, such ballot shall not be deposited in the ballot box, but shall be marked "Rejected for exposure," and shall be disposed of as are other rejected ballots. In case such elector shall so expose his ballot, a minute of such occurrence shall be entered on the poll lists opposite his name, and such elector shall not be allowed to vote thereafter at such election. Id., Ch. X, Sec. 12.

SECRECY OF THE BALLOT: The inspectors are not permitted to examine the ballots as handed to them, so that where they are folded they have no means of ascertaining how a person votes, and after the ballot is once deposited they have neither the opportunity nor authority to investigate the matter.—Harbaugh v. Cicott, 33 / 251. It is only the legally qualified voter who is protected in the secrecy of his ballot, and no one has the right to inquire or make known the contents of his ballot, or give evidence of it, without his consent. Even if his qualifications are questioned, his privilege remains until the lack of qualifications is established, either by his own admission or otherwise.—People v. Cicott, 16 / 283; Harbaugh v. Cicott, 33 / 251. The action of the chairman of the board of inspectors, in receiving and depositing in the ballot box the ballots of 13 unregistered persons, and the ballots of a large number of persons who had shown them after they had been marked, and in allowing and instructing third persons to enter the voting booths with a large number of electors, and, after their ballots had been marked by such third persons, depositing them in the ballot box, it is held to have vitiated the vote of the election precinct.—Att'y Gen. v. McQuade, 94 / 439; Att'y Gen. v. May, 99 / 544.

SHOWING BALLOT: The provision that, if the elector shows his ballot after preparing it, such ballot shall not be received or deposited in the box, is mandatory.—Att'y Gen. v. May, 99 / 545. And receiving and depositing in the ballot box a large number of ballots so shown will vitiate the election of the precinct.—Att'y Gen. v. McQuade, 94 / 439.

478. Ballot Boxes to Be Labeled.—The ballots containing the names of candidates for federal, state, district and county offices shall be deposited in one box, the ballots containing the names of candidates for local offices in another box, and the ballots prepared for the submission of proposed constitutional amendments or other propositions shall be deposited in a separate box or boxes. Each box shall be plainly labeled, so that the label may be readily seen by each elector, to indicate the kind of ballots to be deposited therein.—Id., Ch. X, Sec. 13.

SEPARATE BALLOT BOXES: Where state or county measures are to be voted on, or state or county officers to be elected to fill vacancies, at the spring election, the county commissioners must prepare the ballot, and in such cases the ballot may be separate from that of the township and may be cast in a separate box—Peck v. Supervisors, 102 / 356. The elector is not to be deprived of his vote by either the mistake or the fraud of the inspector in depositing it in the wrong box, if the intention of the voter can be ascertained with reasonable certainty. Nor should ballots be rejected, though they may have got into the wrong box by the honest mistake of the voters themselves.—People v. Bates, 11 / 364. When a voter has voted by mistake, he cannot withdraw his ballot and vote again.—Harbaugh v. Cicott, 33 / 241.

479. Spoiled Ballots to Be Returned to Board.—If any elector inadvertently spoils a ballot he shall return all the ballots given him to the board, and said board shall deliver to him another ballot or set of ballots all bearing the same number. Each clerk of election shall, upon the poll list, note the change in the number of the ballot or ballots given such elector. Id., Ch. X, Sec. 14.

480. Preservation of Unused and Spoiled Ballots.—The board of inspectors of election shall preserve the unused ballots, together with the ballots which have been spoiled, and return them to the city or township clerk, with a statement of the number of ballots voted, and the said clerk shall give to the inspectors of election a receipt therefor, which receipt shall be filed with the chairman of the board. Id., Ch. X, Sec. 15.

481. Uninitialed Ballots Not Deposited.—No ballot shall be placed in the ballot box unless it has written or stamped on the back thereof, in the manner provided by law, the initials of an inspector or clerk of election or of the township, village or city clerk. Id., Ch. X, Sec. 16.

482. Limiting Time in Booth.—The board of inspectors of election may make such regulations as they deem proper, reasonably limiting the

time in which an elector may remain in the room or booth while preparing and voting his ballot. Id., Ch. X, Sec. 17.

The provisions of this section (Act 263 of 1889), authorizing the board of elections to limit the time which a voter may remain in the room or booth while preparing and voting his ballot is applicable to elections in cities as well as towns, and it is the imperative duty of such boards to limit the time as provided in said section.—Common Council v. Rush, 82 / 533.

483. Voter Not to Take Ballot or Pencil Outside Railing.—No elector to whom an official ballot has been delivered shall be permitted to pass without the railing without either voting such ballot or returning it to the inspector from whom he received it; and any elector who shall attempt to pass without the railing with a ballot or pencil in his possession, and shall refuse to deliver the same upon request, shall be at once arrested on demand of any member of the board of inspectors. Id., Ch. X, Sec. 18.

484. Unlawful to Persuade Voters.—It shall be unlawful for any inspector or clerk of election, or any person in the polling room or any compartment therewith connected, to persuade or to endeavor to persuade any person to vote for or against any particular candidate or party ticket, or for or against any proposition which is being voted on at such election. Id., Ch. X, Sec. 19.

485. Proceedings at Each Adjournment of Poll.—At each adjournment of the poll, the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of votes, and in case the same do not agree shall, under the direction of the board, correct all mistakes that may be discovered, until such poll lists shall be made in all respects to correspond. The ballot box shall then be opened and the poll list placed therein, the box locked, and, at least five minutes before the removal of the same, a piece of leather or canvas so placed as to extend from the opening in the lid of said ballot box to the key hole and to completely cover both such holes, shall be placed thereon, and the same securely fastened thereon with sealing wax stamped with the official election seal of such township, ward or precinct, such piece of leather or canvas and the sealing wax to be so arranged as to render it impossible to open either of said holes without breaking said seal; or a metal sealing device may be used. The key shall then be delivered to one of the inspectors, the box to another, and the seal to another. Such box shall not be opened nor the seal broken until the box has been publicly exposed at least five minutes before the reopening of the poll. Id., Ch. X, Sec. 20.

SEAL: The seal is a necessary part of the equipment under the general law and must be used to seal the ballot box as required.—Ritze v. Canvassers of Iron County, 172 / 423.

486. Care of Ballot Box, Key and Seal.—The inspector having the key shall keep it in his possession, and deliver it again to the board at the next opening of the poll, and the inspector having the box shall carefully keep it without opening or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that state to the board of inspectors at the next opening of the poll, when the seal shall be broken and the box opened, the poll lists taken out, and the box again locked. Id., Ch. X, Sec. 21.

487. Ballot of Challenged Voter to Be Endorsed.—Whenever, at any election, the ballot of any person who has been challenged as an unqualified voter, and who has taken the oath provided by law in such case to

be taken, shall be received by the inspectors of election, said inspectors shall cause to be plainly endorsed on said ballot, with pencil, before depositing the same in the ballot box, the number corresponding to the number placed after such voter's name on the poll lists; and such inspectors shall cancel all other figures appearing on the back of said ballot, without opening the same: Provided, That in case a ballot shall be so folded, defaced, printed or prepared that such number cannot be legibly and permanently written on the back thereof, said inspectors shall refuse to accept such ballot. Id., Ch. X, Sec. 22.

488. Endorsement to Be Concealed.—To prevent the identification of said ballot, except as hereinafter provided for in case of a contested election, the inspectors of election shall cause to be securely attached to said ballot, with mucilage or other adhesive substance, a slip or piece of blank paper, of the same color and appearance, as near as may be, as the paper of the ballot, in such manner as to cover and wholly conceal said endorsement, but not to injure or deface the same; and if any inspector, clerk, or other officer of an election shall afterward expose said endorsement, or remove the said slip of paper covering the same, or attempt to identify the ballot of any voter, or suffer the same to be done by any other person, he shall, on conviction thereof, be deemed guilty of a misdemeanor. Id., Ch. X, Sec. 23.

489. Proceedings in Case of Contested Elections.—In case of a contested election, on the trial thereof before any court of competent jurisdiction, it shall be competent for either party to the cause to have produced in court the ballot boxes, ballots and poll lists used at the election out of which the cause has arisen, and to introduce evidence proving or tending to prove that any person named on such poll lists was an unqualified voter at the election aforesaid, and that the ballot of such person was received as provided in section 22 of this chapter, and on such trial, the correspondence of the number endorsed on a ballot as herein provided, with the number of the ballot placed opposite the name of any person on the poll lists, shall be received as prima facie proof that such ballot was cast by such person: Provided, That the ballot of no person shall be inspected or identified, under the provisions of this chapter, unless such person shall consent thereto in writing, or unless such person has been convicted of falsely swearing in such ballot, or unless the fact that such person was an unqualified voter, at the time of casting such ballot, has been determined as provided in section 25 of this chapter. Id., Ch. X, Sec. 24.

When a person is registered and votes in a ward or precinct, he is presumed to be a legal voter there.—Harbaugh v. Cicott, 33 / 250.

490. Petition for Trial of Question of Qualification of Challenged Voter.—After issue joined in any case of contested election, either party to the cause may present a petition to the court before which the said cause is to be tried, setting forth among other things, that the petitioner has good reason to believe and does believe that one or more voters at the election out of which the cause has arisen, naming him or them, and stating his or their place of residence, were unqualified to vote at such election; that he believes the same can be established by competent testimony; that the ballot or ballots of such voter or voters were received after being challenged, as provided by law, and praying that the court

may try and determine the question of the qualification of such voter or voters to vote at said election; which petition shall be verified by the oath of the petitioner or some other person acquainted with the facts; and thereupon the court shall direct an issue to be formed, within a time to be fixed therefor, for the purpose of determining the question of the qualification of the voter or voters named in said petition, to vote at said election; and such issue shall stand for trial as in other cases, and the verdict of the jury or judgment of the court upon such issue so made shall be received, upon the trial of the principal issue in said cause, as conclusive evidence to establish or to disprove the said qualifications of said voter or voters. Id., Ch. X, Sec. 25.

491. Judge to Remove and Replace Slips.—On said trial, the judge presiding thereat, and no other person, shall remove from all ballots the slips of paper concealing the said endorsements until all ballots are found having thereon the numbers agreeing with the numbers against the names of such persons on the poll lists as have been proved unqualified voters as aforesaid, and immediately thereafter shall replace slips of paper upon all other ballots from which he has taken the same, in the same manner as is provided in section 23 of this chapter for the inspectors of election. Id., Ch. X, Sec. 26.

492. Each Party May Have Challengers at Polls.—At every election, each of the political parties, and any organization or committee of citizens interested in the adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise, shall have the right to designate and keep not exceeding two challengers at each place of voting, who shall be assigned such positions immediately adjoining the inspectors inside the polling place as will enable them to see each person as he offers to vote. Id., Ch. X, Sec. 27.

People v. Hanna, 98 / 516; Att'y Gen. v. May, 99 / 566.

493. Challengers May Inspect Poll Lists.—A seat within the railing shall be furnished by the board of inspectors of election for the accommodation of such challengers, for each such political party, organization or committee, and such challengers shall have the right to inspect the poll lists as kept by the clerks. Id., Ch. X, Sec. 28.

494. Challengers Shall Be Protected.—The challengers shall be protected in the discharge of their duty by the inspectors and the police. Id., Ch. X, Sec. 29.

495. Authority of Challengers.—Authority signed by the recognized chairman or presiding officer of the chief managing committee of any organization or committee of citizens interested in the adoption or defeat of any measure to be voted for or upon at any election, or interested in preserving the purity of elections and in guarding against the abuse of the elective franchise or any polititcal party in such county, township, city, ward or village, shall be sufficient evidence of the right of such challengers to be present inside the room where the ballot box is kept. Id., Ch. X, Sec. 30.

496. Challenger May Be Removed.—The chairman appointing any challenger may, at his discretion, remove him and appoint another. Id., Ch. X, Sec. 31.

497. Challenger May Remain During Canvass.—Any challenger shall have the right and privilege of remaining during the canvass of the votes and until the returns are duly signed and made. Id., Ch. X, Sec. 31.

498. Penalty for Obstructing Challengers.—Any officer or election board who shall prevent the presence of any such challengers as above provided, or shall refuse or fail to provide such challengers with conveniences for the performance of the duties expected of them, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or imprisonment in the state prison not exceeding two years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. X, Sec. 32.

499. Statement of Intent to Appoint Challengers Must Be Filed.—Not less than ten nor more than twenty days prior to any election any organization or committee of cittizens other than political party committees authorized by the provisions of this act and intending to appoint challengers at such election shall file with the clerk of the county, village or city in which such election is to be held, a statement setting forth the intention of such organization or committee to appoint such challengers. Such statement shall set forth the reason why such organization or committee claims the right to appoint such challengers, with a facsimile of the card to be used, and shall be signed and sworn to by the chief presiding officer, the secretary or some other officer of such organization or committee. Not less than five days preceding any election when such statements shall have been filed with him, it shall be the duty of such clerk to furnish to the inspectors of election in such county, village or city, the names of any organizations or committee authorized to appoint and keep challengers at the places of voting in such county, village or city. Any person who shall file such statement in behalf of any organization or committee not authorized by the provisions of this act to appoint such challengers, or any county, village or city clerk who shall fail to perform the duties required of him by the provisions of this section, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, or imprisonment in the state prison not exceeding two years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. X, Sec. 33.

CHAPTER XI.

ASSISTED VOTERS.

500. When Voter May Be Assisted.—Whenever at any election an elector shall state under oath, duly administered by some member of the election board, that he cannot read English, or that because of physical disability he cannot mark his ballot, and such disability shall be made manifest to said inspectors, he shall be assisted in the marking of his ballot by an inspector designated by the elector: Provided, That if said elector does not designate an inspector to assist him, the board shall in such case designate one of its members to assist said elector. Act 203 of 1917, Ch. XI, Sec. 1.

DISABLED VOTERS: The provisions of this section relative to the marking of the ballots of illiterate or disabled voters are mandatory.—Att'y Gen. v. McQuade, 94 / 422; McQuade v. Furgason, 91 / 438; Att'y Gen. v. May, 99 / 545. The provisions of this section, with those of section 181. are intended to secure the entire secrecy of the ballot, except so far as is absolutely necessary to enable such electors as cannot read English to have assist-

ance in marking it. The only test of the ability of the voter to read English is his oath. No other test is permissible, and it is unlawful for any inspector to assist in marking a ballot for any elector, until such elector shall have first taken the oath.—Att'y Gen. v. May, 99 / 544. At the expense of the secrecy of the ballot, the law provides a method of aiding electors who are physically incapacitated or unable to read English. It does not deprive those voters of any right, but rather secures to them aid in voting intelligently.—Id. 547.

501. **Oath Administered to Assisted Voter.**—The oath shall be administered to such elector before he is given a ballot and before he is permitted to enter a booth, which oath shall be in the following form: "You do solemnly swear (or affirm) that you cannot mark your ballot because of .....(Here state disability.)" Id., Ch. XI, Sec. 2.

502. **Ballots of Assisted Voter to Be Marked.**—All ballots of voters assisted shall be marked for identification the same as is provided by section 22 of Chapter X of this act for the marking of ballots of challenged voters. Id., Ch. XI, Sec. 3.

503. **How Assistance to Be Given.**—The inspector designated for that purpose shall assist a voter, in the presence of all challengers and other persons outside the voting booth, by showing him how to mark his ballot in order to vote as he desires, or shall himself mark the ballot as directed by the voter, but no ballot shall be marked by the inspector from any written or printed list or slip furnished him by the voter or any other person. The inspector shall not suggest to the voter how he should vote, or in any manner attempt to influence him as to the marking of his ballot, nor allow any other person to do so. Id., Ch. XI, Sec. 4.

Att'y Gen. v. McQuade, 94 / 442; Att'y Gen. v. May, 99 / 544.

504. **List to Be Kept of Assisted Voters.**—Whenever an elector is thus sworn there shall be entered on a list, the form for which shall be furnished the inspectors of election for that purpose by the clerk of the township or city, the name and address of the voter thus sworn and the words "sworn to disability," with a statement as to the nature of the disability and the date of the election at which such entry was made. At the close of the election such list shall be signed and certified as correct by each member of the election board, and shall be filed with the clerk of such township or city. If no elector shall have been assisted as herein provided, such fact shall be certified to upon such list. Id., Ch. XI, Sec. 5.

505. **False Swearing Deemed Perjury.**—Any elector who shall swear falsely that he is incapable of marking his ballot shall, on conviction, be deemed guilty of perjury. Id., Ch. XI, Sec. 6.

506. **Penalty for Violating Law Relating to Assisted Voters.**—Any inspector who shall administer an oath, or who shall permit an oath to be administered in his presence, to any person whom he knows to be capable of marking the ballot for himself, or who shall assist any elector in any manner contrary to the provisions contained herein, or who shall neglect or refuse to keep the record of such oath having been administered, or to mark the ballot of an assisted voter for identification, as is required herein, shall, upon conviction, be deemed guilty of a felony. Id., Ch. XI, Sec. 7.

CHAPTER XII.

ABSENT VOTERS.

507. Absent Voter Defined.—For the purposes of this act the term "absent voter" shall be taken to mean any qualified elector, who is absent or who expects to be absent from the township or ward in which he resides, on the day of any election or official primary election, and who is

(1) A person in the actual service of the United States, or of this state, or

(2) A student, while in attendance at any institution of learning, or

(3) A regularly enrolled member of any citizens' military or naval training camp, held under the government of the United States or the state of Michigan, or

(4) A member of the legislature while in attendance at any session of the legislature, or

(5) A commercial traveler, or

(6) A person employed upon or in the operation of railroad trains in this state, or

(7) A sailor engaged or employed on the great lakes or in coastwise trade.

The term "commercial traveler" shall be taken to mean a person engaged in soliciting the sale of goods, by the exhibition of samples, or by catalogue or other device, for the purpose of effecting such sales and taking orders for goods to be subsequently shipped by his employer. Act 203 of 1917, Ch. XII, Sec. 1.

For constitutional provision relative to absent voters see Section 384 of this Guide.
For provisions relative to absent voters at primaries, see Sections 659-675.

508. Authority to Vote.—Any such absent voter may vote at any election as hereinafter provided. Id., Ch. XII, Sec. 2.

509. Application for Ballots.—At any time during the thirty days next preceding any election any such voter expecting to be absent on the day of such election from the township or ward in which his voting precinct is situated, may make application, to the township, city or village clerk, either in person or by mail, upon a blank to be furnished by the county clerk to the various township, city and village clerks for that purpose, for the official ballot or ballots to be voted at such election: Provided, That the application may be made upon a blank prepared by said voter, provided said application is substantially in the form required by this section. Such application blank shall, upon request therefor, be immediately sent by such township, city or village clerk to said absent voter by mail or shall be delivered to said voter upon application made personally at the office of such township, city or village clerk. Such application blank shall be in substantially the following form, and shall be signed and sworn to by the applicant before some officer authorized to administer oaths:

Application for absent voter's ballot for the election to be held on ....., 19....

I,.....,a duly qualified elector of the..... precinct of the township of....., or village of..... or the.....ward of the city of....., in the county of ....., and State of Michigan, and a.....
(Give occupation.)
expecting to be absent from the said township or ward on the day for holding such election, hereby make application for an official ballot, or ballots, to be voted by me at such election. I request an official ballot of the ..... party.
(To be filled in for primary elections only.)
Send "absent voter" ballot to me at ..... post office.
City, township or village address, if any, ...
Signature of applicant, ...
Home address of applicant, ...
Date, ...
Subscribed and sworn to before me, a .....
in and for ..... county, state of .....
this ..... day of ..... 19....

.....
Signature of Official.

Official title .....
Commission expires .....

Id., Ch. XII, Sec. 3.

510. Clerk to Keep List of Applications.—Upon receipt of such application blank, filled out, signed and sworn to as above provided, the township, village or city clerk shall file the same in his office and shall enter the name of the applicant and the address to which such ballot or ballots are to be sent, upon a list or record to be kept by such clerk for such purpose, together with the date of receiving the application, the date of mailing or delivering the ballot or ballots to such voter, the date of receiving the ballot from such voter, and such other information as may seem necessary or advisable. The clerk shall keep a separate list or record for each voting precinct in his city, village or township. Id., Ch. XII, Sec. 4.

511. Delivery of Ballots to Applicants.—The township, village or city clerk shall forward by mail, immediately, postage prepaid, or shall deliver personally, one of such ballots, (or if there be more than one kind of ballots to be voted, then one ballot of each kind) to each applicant for absent voter ballots from his city, village or township, as shown by the list provided for in the preceding section, provided such applicant is properly registered. But such clerk shall not be required to receive applications for absent voter ballots later than the second day preceding any election. All the ballots sent or delivered to an applicant from any precinct for absent voter ballots shall bear the same number, beginning with number one for the first applicant from a precinct, number two for the second applicant from that precinct, and so on. At the time of mailing or delivering a ballot or set of ballots to any such applicant the said township, village or city clerk shall write his own initials in ink or with indelible pencil on each such ballot, in the same manner as is provided by law for the initialing of ballots by inspectors of election. The said clerk shall enclose with such ballot or ballots a return envelope properly ad-

dressed to himself and bearing upon the back side thereof a printed affidavit in substantially the following form:

State of .....}
County of ..... } ss

(I, ..., do hereby solemnly swear (or affirm) that I am a resident of the ..... precinct of the {township / village} of ..... the ..... precinct of the ..... ward or the city of ....., in the county of ..... State of Michigan and entitled to vote in such precinct; that the enclosed ballot was marked by me personally and enclosed in this envelope and sealed by me without being exhibited to any other person.

.....
(Signature of absent voter.)

Subscribed and sworn to before me, a ..... in and for ..... county, State of ....., this ..... day of ....., 19....

.....
(Signature of official.)

Official title .....
Commission expires .....

Id., Ch. XII, Sec. 5.

512. When Town Clerk May Open Packages of Ballots.—If from any precinct the said township, village or city clerk shall not receive any application for absent voter ballots, he shall not initial any of the ballots provided for that precinct, but shall deliver the packages of absent voter ballots intact to the chairman or some member of the board of inspectors of election of said precinct before the opening of the polls on election day.—Id., Ch. XII, Sec. 6.

513. When Clerk to Initial Three Additional Ballots.—In case the said township, village or city clerk shall have sent absent voter ballots to any applicant or applicants therefor from any precinct, he shall, before delivering the unused ballots to the chairman or some member of the board of inspectors of election of such precinct, initial, in the same manner as above provided, three additional ballots of each kind provided for each such precinct, beginning with the lowest numbered ballot remaining for that precinct after the mailing of ballots to absent voters. Id., Ch. XII, Sec. 7.

514. Instructions to Absent Voters.—The city, township or village clerk, as the case may be, shall also enclose with each ballot or set of ballots sent to each absent voter separate printed instructions to be furnished by the county clerk containing the following: "Upon receipt of the ballot or ballots herewith enclosed you will proceed to mark the same in accordance with the instructions, then fold each such ballot so that the corner bearing the initials of the township, village or city clerk may be seen without unfolding the ballot. Place the ballot or ballots in the envelope enclosed herewith and securely seal the same. Make out the affidavit printed upon the back and swear to the same before a notary public or other person authorized to administer oaths, place the necessary postage upon the envelope and deposit the same in the postoffice or in some government receptacle provided for the deposit of mail matter.

Absent voter ballots to be valid must be mailed so that they will reach the clerk of the township, village or city in which your precinct is located, in time to be deposited by him with the proper election board before the closing of the polls on election day." Id., Ch. XII, Sec. 8.

515. **Duty of Absent Voter.**—Upon receipt of such ballot or ballots, the absent voter shall mark it or them in accordance with the printed instructions, shall fold and enclose it or them in the envelope provided therefor, and after sealing the envelope he shall fill out, sign and swear to the affidavit printed on the back thereof, before a notary public or other person authorized to administer oaths. The absent voter shall then place on the envelope the necessary postage, and shall deposit it in the postoffice or in some government receptacle provided for the deposit of mail matter. Id., Ch. XII, Sec. 9.

516. **Town Clerk to Deliver Envelopes Containing Ballots to Precinct Inspectors.**—The city, village or township clerk shall safely keep in his office until election day any envelopes theretofore received by him, containing the marked ballots of any absent voters, and he shall, before the opening of the polls on election day, or as soon thereafter as may be, deliver such envelopes to the chairman or some member of the board of inspectors of election in such absent voter's precinct, together with the signed applications received by him from any voters of such precinct and his list or record kept relative thereto. If thereafter and before the polls are closed on election day the said clerk shall receive any envelope containing the marked ballots of an absent voter, he shall immediately deliver said envelope to the board of inspectors of election in the absent voter's precinct, if sufficient time remains to make such delivery before the closing of the polls. Id., Ch. XII, Sec. 10.

517. **Board to Verify Legality of Vote.**—Upon the receipt from the city, village or township clerk, of any envelope containing the marked ballot or ballots of an absent voter, the board of inspectors of election shall verify the legality of such vote by a comparison of the signature to the affidavit with that upon the application of such absent voter; by an examination of the poll lists to see that such voter has not voted in person; by an examination of the registration book to see that he is a registered voter; and by an examination of the affidavit of such voter to see that the same is properly filled out and attested. Id., Ch. XII, Sec. 11.

518. **Proceedings When Vote is Illegal.**—If upon such examination of the envelope containing an absent voters' ballot or ballots, it is determined by such board that such vote is illegal, then such vote shall be rejected, and thereupon some member of the board shall, without opening the envelope, mark across the face of such envelope, "Rejected as illegal." Said envelope and the ballot or ballots contained therein shall be retained and preserved in the manner now provided by law for the retention and preservation of official ballots voted at such election. Id., Ch. XII, Sec. 12.

519. **Depositing of Absent Voter Ballots in Box.**—If upon such examination of the envelope containing an absent voters' ballot or ballots, the board of inspectors of election shall determine that such vote is illegal, the member of the board receiving ballots at such election shall open the absent voter's envelope, take out the ballot or ballots therein contained and, if the initials on such ballot or ballots are the initials of the city,

village or township clerk, as the case may be, shall, without unfolding such ballot or ballots, detach from each such ballot the perforated numbered corner, and shall deposit each such ballot in the proper ballot box. The clerks of election shall note upon the poll list the fact that such voter voted at such election by means of an absent voter's ballot. Id., Ch. XII, Sec. 13.

520. When "Absent Voter" May Vote in Person.—The provisions of this chapter shall not be construed so as to prohibit any absent voter, returning to his place of residence, from voting in person within his precinct at any regular or special election or official primary election, notwithstanding that he may have made application for an absent voter's ballot and the same may have been mailed by the said clerk: Provided, That such voter has not availed himself of the privileges of an absent voter, as provided by this chapter, and voted any such ballot mailed him by the said clerk, and provided also that he returns such ballot or ballots, if received, to the board of inspectors of election in his precinct. In case any absent voter ballot is so returned, it shall by said board be marked "cancelled" and placed in the regular box with other cancelled ballots. Any voter voting at any election both in person and by means of an absent voter ballot, or who shall attempt so to vote, shall, on conviction, be deemed guilty of a felony. Id., Ch. XII, Sec. 14.

CHAPTER XIII.

UNIFORMITY IN ELECTION RETURNS.

521. Blank Forms for County and District Canvassers.—The secretary of state shall prepare and transmit to the several county clerks at least thirty days before any general or special election at which state, district or county officers are to be elected, suitable blank forms for use by the various county and district boards of canvassers in making returns of the canvass required by law, and the various county and district boards of canvassers shall use the blanks furnished by the secretary of state in making the returns of their canvass. Act 203 of 1917, Ch. XIII, Sec. 1.

522. Blanks for Inspectors' Statements.—Each board of election commissioners shall prepare, at least twelve days before every election, suitable blank forms conforming as near as may be to the forms prepared by the secretary of state pursuant to the preceding section, for use by the inspectors of elections in making returns of such elections to the county or city boards of canvassers, on which forms the names of candidates entitled to appear on the official ballot may be printed.—Id., Ch. XIII, Sec. 2.

523. Delivery of Blank Forms.—At the time of delivering official ballots and other election supplies to the several township and city clerks, or in case of city elections to the several wards or precincts, there shall be delivered with such supplies a sufficient number of such blank forms for use by inspectors of election in making returns of such general or special elections as required by law. Id., Ch. XIII, Sec. 3.

524. Tally Sheets.—The several county boards of election commissioners shall, at the expense of their respective counties, furnish suitable tally sheets to be used by the inspectors of election in counting the votes

for all candidates and for amendments or propositions submitted on ballots prepared by said commission and shall deliver the same to the inspectors of election as provided in this act in the case of ballots. Id., Ch. XIII, Sec. 4.

CHAPTER XIV.

CANVASS BY THE PRECINCT INSPECTORS.

525. Canvass to be Begun Immediately and be Public.—Immediately on closing the polls, the board of inspectors of election in each precinct shall proceed to canvass the votes. Such canvass shall be public and shall commence by a comparison of the poll lists and a correction of any mistakes that may be found therein until they shall be found or made to agree. Act 203 of 1917, Ch. XIV, Sec. 1.

For provisions relative to canvass of vote at township meetings, see Sections 190 to 194 of this Guide.

IMMEDIATE CANVASS: The provisions for an immediate canvass of the ballots were expressly designed to guard against fraudulent tampering with votes before counting.—People v. Sackett, 14 / 325. The election law is positive that the official count of the ballots shall be made immediately, in public, and the result ascertained and declared publicly, and an official statement made of the result.—Keeler v. Robertson, 27 / 128-9. But the neglect of the board to complete the canvass on the night of the election and the dating of their report on the next day ought not to result in the disfranchisement of the voters and should not be so held, except where the plain provisions of the statute require it.—Att'y Gen. v. Glaser, 102 / 397.

DUTIES MINISTERIAL: The duties of canvassing boards are simply ministerial; their whole duty consists in ascertaining who are elected and in authenticating and preserving the evidence of such election.—People v. Van Cleve, 1 / 366. The result of an election is determined by the ballot. The evidence contained therein is the foundation of the statement to be prepared by the inspectors. They cannot go behind the ballot to ascertain the voter's qualifications or intention.—People v. Tisdale, 1 Doug. 59; People v. Woodhull, 14 / 28; Keeler v. Robertson, 27 / 116. The evidence of the voter himself as to his intention is not admissible.—People v. Higgins, 3 / 233. See also People v. Cicott, 16 / 320; People v. Board, 11 / 111; Wheeler v. Coleman, 176 / 285.

526. Disposition of Excess Ballots.—When the board is ready to proceed with the count of any kind of ballots, the box containing such ballots shall be opened and the whole number of ballots counted. If the ballots shall be in excess of the number of the electors voting according to the poll lists, the ballots shall be replaced in the box and one of the inspectors shall publicly draw out and destroy so many ballots therefrom unopened as shall be equal to such excess. Id., Ch. XIV, Sec. 2.

Att'y Gen. v. May, 99 / 556; People v. Cicott, 16 / 283.

527. Uninitialed Ballots Not Counted.—In the canvass of the votes, any ballot which is not indorsed with the initials of an inspector or clerk of election or of the city, village or township clerk, as provided in this act, and any ballot which shall bear any distinguishing mark or mutilation, shall be void, and shall not be counted. All such ballots shall be preserved, marked by the inspectors "not counted," and kept separate from the others by being tied or held in one package by a rubber band or otherwise. Any ballot, or part of a ballot, from which it is impossible to determine the elector's choice of candidate shall be void as to the candidate or candidates thereby affected. Id., Ch. XIV, Sec. 3.

DISTINGUISHING MARKS: Att'y Gen. v. May, 99 / 566; Att'y Gen. v. Glaser, 102 / 396; Att'y Gen. v. Howcroft, 107 / 85. The evident intent of this provision was to provide against voters marking the individual ballot which they cast in such manner as to distinguish it.—Lindstrom v. Canvassers, 94 / 471. Distinguishing marks fraudulently placed on the ballots after they were cast do not vitiate them.—Att'y Gen. v. Blank, 107 / 85.

528. Counting of Ballots.—In the canvass of votes cast for candidates for public office the board shall first select and count the straight tickets,

and shall cause to be credited on the tally sheets the number to each candidate voted for on the straight ticket. All other ballots shall be counted in such manner as will best insure accuracy and promptness in determining the result, and the inspectors of election shall see that proper credit is given on the tally sheets to the candidates voted for on such ballots. Id., Ch. XIV, Sec. 4.

529. Disposition of Ballots, Boxes and Seal.—After the ballots of each kind are counted they shall, together with one tally sheet, be placed in the ballot box, which shall be securely sealed in such manner that it cannot be opened without breaking such seal. The ballot box shall then be delivered to the township or city clerk, but the keys of said ballot box shall be held by the chairman of the board and the election seal by one of the other inspectors of election. Id., Ch. XIV, Sec. 5.

530. Proclamation of Result.—Immediately after the canvass has been completed, one of the inspectors shall, in a loud voice, make proclamation of the result, stating the total number of votes received by each person voted for in said precinct for any office and the number of votes for and the number of votes against any proposed constitutional amendment or other submitted proposition. Id., Ch. XIV, Sec. 6.

531. Duplicate Statements of Result.—The inspectors shall then prepare duplicate statements of the result, showing the whole number of votes cast for each federal, state, district and county office, the names of the persons for whom such votes were given and the number each person received, and shall also prepare duplicate statements of the result on any proposed constitutional amendment or other proposition submitted to the voters of said county at said election, showing the whole number of votes cast, the number of votes cast for and the number of votes cast against any such proposed constitutional amendment or other proposition. Id., Ch. XIV, Sec. 7.

For provisions as to statement of result in townships, see Sections 192 and 193 of this Guide.

CANVASS FINAL: The action of the inspectors is final, when they have finished their count and sealed up the ballots. Every opening of the ballots thereafter, except upon an election contest, when they will be needed in court, is an unlawful act and cannot be made the basis of official action.—Keeler v. Robertson, 27 / 129. When inspectors of election have completed their count and executed and delivered their returns to the proper officer, their legal powers end, and any attempt on their part to change or modify such returns in any particular involving other than a mere clerical duty is clearly beyond their powers.—Roemer v. Canvassers, 90 / 30.

532. Disposition of Statements and One Poll List.—One of each such statements and one of such tally sheets, sealed up in an envelope and addressed to the board of county canvassers, in care of the judge of probate; and the other one of each such statements, of each kind and one of the poll lists, sealed up in an envelope addressed to the county clerk, shall thereupon be delivered by said inspectors to the clerk of the township or city, as the case may be, who shall, within twenty-four hours, deliver the said envelope to the persons to whom addressed, or immediately forward them by registered mail with return receipt demanded. The judge of probate shall deliver all such statements received by him to the board of county canvassers when it meets to canvass the returns. Id., Ch. XIV, Sec. 8.

533. Number of Votes to be Stated in Words and Figures.—In each statement required to be made by the precinct inspectors of the result of

any election, the number of votes shall be stated in words at length, and also in figures. Id., Ch. XIV, Sec. 9.

534. **Other Poll List to be Delivered to Township Clerk.**—One of the poll lists shall be delivered to the clerk of the township or city, as the case may be, and shall be by him filed in his office. Id., Ch. XIV, Sec. 10.

CHAPTER XV.

PRECINCT COUNTING BOARDS OF INSPECTORS.

535. **Town Board May Provide for Counting Board.**—The township board of any township or the legislative body of any city or village may, by resolution, passed by at least a majority vote of the members elect of such township board or legislative body, provide that, for any election, in any or in each precinct of such township, city or village, there shall be an additional board of three inspectors of election, which shall be known as the counting board, whose duty it shall be to count the ballots cast in such precinct at such election and make returns thereof. Act 203 of 1917, Ch. XV, Sec. 1.

536. **Powers and Duties of Counting Board.**—All the provisions of this act relative to the appointment and qualification of inspectors of election shall apply with like force and effect to appointment and qualification of the members of any such counting board. All the duties enjoined upon, and all powers and privileges granted to, inspectors of election by this act, relative to the counting of the votes cast at, and the making of returns of, any election, are hereby enjoined upon and granted to the members of any such counting board. Id., Ch. XV, Sec. 2.

537. **When Counting Board to Assume Duties.**—In any precinct for which, pursuant to this chapter, a counting board has been provided, the duties of inspectors of election who have conducted the election during the day, and the duties of the clerks of election in such precinct shall, on the closing of the polls, cease and determine; and the counting board shall thereupon assume charge and control of the place of voting, the ballot boxes, ballots, and all other equipment of said polling place and shall proceed with the counting of the votes. Such counting board shall do and perform all things required by this act to be done and performed after the closing of the polls at an election by the board of inspectors of election in a precinct not having a counting board as provided for in this chapter. Id., Ch. XV, Sec. 3.

538. **Counting Board May Appoint Clerk.**—Any such counting board shall have authority to appoint a clerk to assist said board in the performance of the duties prescribed by this chapter. Any clerk so appointed shall take the constitutional oath of office before entering upon the discharge of his duties, which oath any member of said counting board may administer. Id., Ch. XV, Sec. 4.

539.—**Compensation of Counting Board and Clerk.**—Each member of a counting board and any clerk appointed pursuant to the provisions of this chapter shall receive for his services hereunder such compensation as shall be allowed by the township board or legislative body. Id., Ch. XV, Sec. 5.

CHAPTERS XVI, XVII, XVIII and XIX.

[Chapter XVI of the Michigan Election Law (Act 203 of 1917) relating to the County Canvass; Chapter XVII, relating to the determination by lot of election of members of the legislature or county officers in case of tie; Chapter XVIII, relating to the District Canvass; and Chapter XIX, relating to the State Canvass, are omitted from this compilation.]

CHAPTER XX.

RECOUNTS AND CORRECTION OF FRAUDS AND ERRORS IN RETURNS BY COUNTY, CITY, VILLAGE AND TOWNSHIP BOARDS OF CANVASSERS.

540. Candidate May Petition for Recount.—Any candidate voted for, for a village, township, city or ward, or county office, at any election, conceiving himself aggrieved on account of any fraud or mistake in the canvass of the votes by the inspectors of election, or in the returns made thereon by said inspectors, may petition for a recount of the votes cast for such office in any precinct or precincts. Act 203 of 1917, Ch. XX, Sec. 1.

PURPOSE OF THE LAW: It was intended by this act (Act 208 of 1887) to give a party aggrieved by the action of the inspectors of election and the board of city canvassers the right to a recount of the votes cast for and against him, for the office for which he was a candidate, in the first instance at least, if he should desire it, without resort to proceedings by quo warranto.—McKenzie v. Canvassers, 70 / 151; May v. Canvassers, 94 / 510. The evident purpose of this act was to provide for a recount antecedent to the determination by the county canvassers of the number of votes cast for the office as to which the recount is applied for. It was clearly intended that, in case of various contests arising before the board, different committees could be appointed and the count in all cases proceed at once. The board acting on a contest may well be held to constitute a special tribunal, when in session, only for the purpose of considering such contest. It was not the legislative intent that a presentation of the application to the body, when so acting, and after a full performance and determination of the result as to the candidates for other offices should entitle the party presenting such petition to a recount.—Newton v. Canvassers, 94 / 458. Electors are not to be deprived of the result of their votes by the mere mistakes of election officers which do not appear to have affected the result. But, on the other hand, where fraud appears upon the part of the inspectors, the voter must sometimes be deprived of his vote; and this must always be the case where mandatory provisions of the election law are disregarded, if the result would be thereby changed.—Att'y Gen. v. Stillson, 108 / 419. The board of canvassers, on return of the report of a recount committee appointed under this section, are under no duty to correct errors of the committee not shown on the face of their report.—Atwood v. Sault Ste. Marie, 141 / 295.

The only way to try titles to office finally and conclusively is by quo warranto.—Frey v. Michie, 68 / 324. Lachance v. Mackinac Co. Canvassers, 157 / 679.

Where respondent, a candidate for election as supervisor, was also a member of the board of election canvassers, and signed the report of a recount declaring respondent elected, but a majority of the board without counting respondent signed the report, it was valid and conclusive of the facts stated therein.—Miner v. Beurmann, 165 / 672.

ENFORCEABLE BY MANDAMUS: The right to a recount, upon compliance with the provisions of this act, is enforceable by mandamus.—May v. Canvassers, 94 / 510; McKenzie v. Canvassers, 70 / 147; Packard v. Canvassers, 94 / 450.

APPLICATION TOO LATE: An application by a candidate for supreme judge to a board of county canvassers under this act made on the last day on which the state canvassers can canvass the returns and issue the certificate of election, is not in time.—Newton v. Canvassers, 94 / 455; Drennan v. Com. Council, 106 / 117.

WHEN ACT DOES NOT APPLY: This act (Act 293 of 1887) does not apply in the case of members of a common council in a city whose council is made the sole judge of the election of its members.—Weston v. Probate Judge, 69 / 600; Naumann v. Canvassers, 73 / 252; Aud. Gen. v. Supervisors, 89 / 567; Hilton v. Grand Rapids Co. Council, 112 / 500. But these acts apply in cases where the council is not made by the charter the judge of the election and qualification of its own members.—McKenzie v. Canvassers, 70 / 147. These acts do not apply to the office of state senator.—Wheeler v. Canvassers, 94 / 448. Nor congressmen.—Belknap v. Canvassers, 94 / 516. Nor circuit judge.—Vance v. Canvassers, 95 / 462.

EFFECT OF RECOUNT MADE: When the board has recounted and declared the result, it becomes functus officio and the remedy of the party claiming to be aggrieved is by a quo warranto proceeding to test the validity of the election.—Packard v. Canvassers, 94 / 451.

VOTING MACHINES: Application of this section when voting machines are used.—Trumbull v. Bd. of Canvassers, 140 / 537.

See also Lamoreaux v. Att'y Gen., 89 / 146; Johnson v. Bd. of Canvassers, 101 / 191; Keith v. Wendt, 144 / 49; Ward v. Culver, 144 / 57, 71; Wheeler v. Coleman, 176 / 285; Hilton v. Common Council, 94 / 451; Sinclair v. Common Council, 181 / 186.

541. Recount on Submitted Question.—Any qualified elector voting in any county at the last preceding election who believes that there has been fraud or error committed by the inspectors of election in their canvass or returns of the votes cast at said election, upon the question of any proposed amendment to the constitution, or any proposed amendment to the charter of any city or village, or any other proposition which shall be submitted to the voters of any county, township, city or village, may petition for a recount of the votes cast in any precinct or precincts of said county, township, city or village, upon such proposed amendment or other proposition. Id., Ch. XX, Sec. 2.

542. What Petition Shall Contain.—Such petition shall be sworn to and shall set forth as near as may be the nature of the mistakes or frauds complained of and the township, village, ward or precinct in which they are alleged to have occurred, and shall ask for a correction thereof. Id., Ch. XX, Sec. 3.

543. Where Petitions Shall be Filed.—Such petition, if the office or proposition in question be a village office or proposition, shall be filed with the clerk of the board of village canvassers; if a city or ward office or proposition, with the clerk of the board of city canvassers; and if a county office, or if the petition be for a recount of the votes cast on any proposed amendment to the constitution or any other submitted proposition, the votes upon which proposition are canvassed by the board of county canvassers or the board of supervisors, with the clerk of the board of county canvassers or board of supervisors, as the case may be; in each case, on or before the last day on which such board meets to canvass the returns. If the office or proposition in question be a township office or proposition, such petition shall be filed with the clerk of the board of township canvassers within three days after the conclusion of the township canvass. The usual final adjournment of a township board of canvassers shall be deemed subject to the recall of the board as herein provided. Id., Ch. XX, Sec. 4.

544. Money Deposit by Petitioner.—At the time of filing any such petition required by this chapter to be filed with the clerk of a board of canvassers the petitioner shall deposit or cause to be deposited with the clerk of said board the sum of ten dollars for each and every township, village or ward referred to in his petition, but no petitioner shall be required to deposit more than one hundred dollars. Id., Ch. XX, Sec. 5.

545. When Money Paid to Treasurer—The sum so deposited shall be paid, in case such petitioner does not establish a fraud or mistake as set forth in his petition, by the clerk of the board of city canvassers to the city treasurer; by the clerk of the board of village canvassers to the village treasurer; by the township clerk to the township treasurer; or by the clerk of the board of county canvassers to the county treasurer; for the use of the city, village, township or county, as the case may be. Id., Ch. XX, Sec. 6.

546. When Money Refunded to Petitioner.—In all cases where, by reason of such recount, the petitioner succeeds in establishing fraud or mistake, as set forth in his petition, and receives a certificate of election, or establishes sufficient fraud or mistake to change the result on any proposition the votes for and against which were recounted, the money deposited by him shall be refunded. Id., Ch. XX, Sec. 7.

547. Notice to Opposing Candidate.—Any candidate filing such petition, and making the deposit herein required, shall give notice thereof to the opposing candidate within twelve hours after filing same, by handing or delivering to such candidate a copy of such petition, or, if such candidate cannot be found, by leaving such copy at his last place of residence. It shall not be necessary for any elector filing a petition for a recount of the votes cast upon the question of a proposed amendment to the constitution or other proposition to give any such notice. Id., Ch. XX, Sec. 8.

548. Board to Make Investigation.—Upon the filing of such petition, the making of such deposit and the giving of such notice, if notice is required to be given, the board of township, village, city or county canvassers shall proceed to make an investigation of the facts set forth in said petition. Id., Ch. XX, Sec. 9.

549. Powers of Board in Making Investigation.—For the purpose of such investigation the clerk, if no meeting be already appointed, shall call a meeting of such board of canvassers and the said board shall have power to cause the ballot boxes used in the election precinct or precincts referred to in the petition and the keys of said boxes and the election seal of the said precinct or precincts to be brought before them. Id., Ch. XX, Sec. 10.

550. Proceedings Upon Recount.—The board thereupon, in some public place where such candidates or persons interested in such proposition, and their counsel, may be present, if they so desire, shall proceed forthwith to open the ballot boxes from such precincts, townships or wards, and to make a recount thereof as to such candidates, question or proposition, and make a full, complete and correct return in writing, showing the full number of votes cast, the names of candidates, and the number of votes given to each, or the total number of votes cast for and against any such proposition, written out in words and figures. Id., Ch. XX, Sec. 11.

551. Boxes, Keys and Seals to be Returned.—As soon as the recount is completed, said board shall at once return the ballots to their respective boxes, carefully fasten and seal said boxes and deliver them, and the keys and election seals to the officer or officers having the care and custody thereof. Id., Ch. XX, Sec. 12.

552. Returns of Recount Board Deemed Correct.—The returns made by the said board of canvassers upon recount, shall be deemed to be correct, anything in the previous return from such township, ward or precinct to the contrary notwithstanding. Id., Ch. XX, Sec. 13.

553. When Proceedings May be Had upon Certiorari.—Any candidate for a village, township, city or ward, or county office, not receiving a certificate of election, or any qualified elector voting at the last preceding election when a proposed constitutional amendment or any other proposition has been voted on, may, for error apparent upon the face of the returns, have the same examined and corrected upon certiorari to the circuit court of the county, according to the rules and practices applicable to such writs. Id., Ch. XX, Sec. 14.

See Judicature Act of 1915 relative to proceedings upon certiorari.
See also Curran v. Norris, 58 / 512.

554. Remedy by Quo Warranto to Remain.—For fraudulent or illegal voting, or tampering with the ballot boxes before a recount by the board

of canvassers, the remedy by quo warranto shall remain in full force together with any other remedies now existing. Id., Ch. XX, Sec. 15.

For law relating to proceedings by quo warranto, see Judicature Act of 1915.
See also Lamoreaux v. Att'y Gen., 89 / 146; Wheeler v. Coleman, 176 / 285; Curran v. Norris, 58 / 512.

CHAPTERS XXI, XXII AND XXIII.

[Chapter XXI of the Michigan Election Law (Act 203 of 1917) relating to recounts by State canvassers; Chapter XXII, relating to electors of President and Vice President; Chapter XXIII, relating to party committees, are omitted from this compilation.]

CHAPTER XXIV.

MISCELLANEOUS PROVISIONS.

555. **Oath of Inspectors and Clerks of Election.**—The oath directed in this act to be taken by persons chosen to be inspectors or appointed clerks of election shall be in the form prescribed in the second section of the sixteenth article of the constitution. Act 203 of 1917, Ch. XXIV, Sec. 1.

556. **Civil Process Not Served on Election Day.**—During the day on which any election shall be held, pursuant to the provisions of law, no civil process shall be served on any elector entitled to vote at such election. Id., Ch. XXIV, Sec. 4.

557. **Officer to Continue in Office Until Successor is Elected and Qualified.**—The person holding any office shall continue to hold the same, after the expiration of the term thereof, until his successor shall be elected or appointed and qualified. When any person shall be elected to fill a vacancy in any elective office, he shall hold the same only during the unexpired portion of the regular term limited to such office, and until his successor shall be elected and qualified. Id., Ch. XXIV, Sec. 5.

558. **Statement Showing Purport of Submitted Question.**—The secretary of state is required to prepare a concise statement, setting forth the purport, nature and effect of any proposed constitutional amendment or other question to be submitted to the electors of the State and to furnish copies of said statement to county clerks; who, in turn, are required to furnish said copies to the several township clerks. See Act 203 of 1917, Ch. XXIV, Secs. 6, 7 and 8.

559. **Duties of Town Clerk and Inspectors of Election as to Statements.**—Said township clerk shall before the opening of the polls on election day, deliver the copies of such statement to which any voting precinct in his township is entitled, to the board of election inspectors of said precinct, who shall post the same in conspicuous places in the room where such election is held. Id., Ch. XXIV, Sec. 8.

560. **Preservation of Ballots in Contested Congressional Elections.**—Whenever a contest for the office of congressman is in progress before the house of representatives, any circuit court may issue a restraining order directed to the officers having custody of the ballot boxes within the congressional district, restraining them from interfering with said boxes, the seals or locks thereon or the ballots therein, during the pendency of

the taking of testimony in such contest. See Act 211 of 1917, Secs. 1 and 2.

Service of such restraining order may be made either personally, as in the case of ordinary process of said court, or in cases of emergency such service may be made by registered mail. Notice of the issuance of such restraining order may be given to the officers to whom the same is directed, by telegraph or by telephone, in advance of the actual service of said order, and after the giving of such advance notice, said officer shall be charged with the same duties with regard to the preservation of the ballot boxes and ballots as after actual service of a copy of said order. Id., Sec. 3.

Any officer who shall violate the terms of such restraining order shall be in contempt of said court and shall, in addition, be liable to a fine of not less than fifty dollars nor more than five hundred dollars, in the discretion of the court. Id., Sec. 4.

CHAPTER XXV.

OFFENSES AND PENALTIES.

561. Name of Candidate Voted for Not to Be Disclosed.—Any person who shall disclose to any other person the name of any candidate voted for by any elector the contents of whose ballots shall have been seen by such person, or shall in any manner obstruct or attempt to obstruct any elector in the exercise of his duties as such elector under this act, shall, on conviction, be deemed guilty of a felony. Act 203 of 1917, Ch. XXV, Sec. 1.

562. Record, Etc., of Election; Felony to Detroy, Etc.—Every inspector of election, clerk or other officer or person having the custody of any record, election list of voters, affidavit, return or statement of votes, certificates, poll book, or of any paper, document or vote of any description, in this act directed to be made, filed or preserved, who is guilty of stealing, wilfully destroying, mutilating, defacing, falsifying or fraudulently removing or secreting the whole or any part thereof; or who shall fraudulently make any entry, erasure, or alteration therein, except as allowed and directed by the provisions of this act; or who permits any other person so to do, shall, on conviction, be deemed guilty of a felony. Id., Ch. XXV, Sec. 2.

563. Penalty for Bribery.—If any person shall by bribery, menace, or any other corrupt means or device whatever, either directly or indirectly, attempt to influence any elector in giving his vote, or deter him from, or interrupt him in giving the same, at any election held pursuant to the law, such person shall, on conviction, be deemed guilty of a felony. Id., Ch. XXV, Sec. 3.

564. Penalty for Illegal Voting.—Every person not a qualified voter, who shall, at any election, wilfully give in a vote; and every qualified voter who, at such election, shall vote or offer to vote in any township or ward in which he does not reside, or who shall vote or offer to vote more than once at the same election, either in the same or any other township or ward, shall, on conviction, be deemed guilty of a felony. Id., Ch. XXV, Sec. 4.

565. **Penalty for Procuring Illegal Voting.**—Every person who shall procure, aid or counsel any person not duly qualified to vote at the place where the vote is given or offered, to give or offer his vote at any such election, and every person who shall procure, aid or counsel any person to go or come into any township or ward for the purpose of voting therein, at any election, knowing that such person is not duly qualified to vote in such township or ward, shall, on conviction, be deemed guilty of a felony. Id., Ch. XXV, Sec. 5.

566. **Penalty for Tampering with Boxes, Ballots, Etc.**—Any person not duly authorized by law, who shall, during the progress of any election in this State, or after the closing of the polls, and before the ballots are counted, and the result ascertained, break open, or violate the seals or locks of any ballot box in which ballots have been deposited at such election, or who shall obtain undue possession of such ballot box containing such ballots, and conceal, withhold or destroy the same, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited, and all persons aiding or abetting therein, shall, on conviction, be deemed guilty of a felony. Id., Ch. XXV, Sec. 6.

567. **Inspector to Inform Prosecuting Attorney of Offenses.**—It shall be the duty of every inspector of election, knowing, or having reason to believe, that an offense punishable under the provisions of this chapter, has been committed, to give information thereof to the prosecuting attorney without delay, and such prosecuting attorney shall adopt effectual measures for the prosecution of all persons believed to be guilty of such offense. Id., Ch. XXV, Sec. 7.

568. **Penalty for Threat to Discharge Employe.**—Any person who shall directly or indirectly discharge or threaten to discharge any person who may be in his employ, for the purpose of influencing his vote at any election in this State, and any priest, pastor, curate or other officer of any religions association or society, who shall impose or threaten to impose any penalty of excommunication, dismissal or expulsion, or who shall command or advise, under pain of religious disapproval, for the purpose of influencing any voter at an election in this State, shall, on conviction, be deemed guilty of a misdemeanor. Id., Ch. XXV, Sec. 8.

569. **Election of Candidate Convicted of Felony Void.**—If any candidate for any public office at any election in this State shall be convicted of a felony, as defined in this act, the election of such candidate, if he has been elected, shall be void; and if he shall enter into the office for which he was elected, an information in the nature of a *quo warranto,* to oust him from such office, may be filed in the supreme court, or the proper circuit court. Id., Ch. XXV, Sec. 9.

570. **Penalty for Violation by Officers of Provisions of This Act.**—Any wilful violation of duty by any person charged with the execution of this act or any provision thereof, if a penalty for violation of such provision is not herein otherwise particularly provided, shall be deemed a misdemeanor, and the person guilty thereof shall be punished accordingly. It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information that any such offense has been committed, to cause the same to be prosecuted. Id., Ch. XXV, Sec. 10.

571. **Violation of This Act a Misdemeanor.**—Any person who violates any provision of this act, and a penalty for such violation is not herein

otherwise particularly provided, shall, on conviction, be deemed guilty of a misdemeanor. Id., Ch. XXV, Sec. 11.

572. **Wilful Failure to Perform Duty a Misdemeanor.**—Any person who wilfully fails to perform any duty enjoined upon him by any provisions of this act, shall, upon conviction, be deemed guilty of a misdemeanor. Id., Ch. XXV, Sec. 12.

573. **Penalty on Conviction of Misdemeanor.**—Any person who shall be found guilty of a misdemeanor under the provisions of this act shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XXV, Sec. 13.

574. **Penalty on Conviction of a Felony.**—Any person found guilty of a felony under the provisions of this act shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State prison for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XXV, Sec. 14.

575. **Penalty on Conviction of Perjury.**—Any person found guilty of perjury under the provisions of this act shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State prison for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court. Id., Ch. XXV, Sec. 15.

576. **Penalty on Conviction of Forgery.**—Any person found guilty of forgery under the provisions of this act shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State prison for a term not exceeding five years, or by both fine and imprisonment, in the discretion of the court. Id., Ch. XXV, Sec. 16.

CHAPTER XXVI.

ELECTIVE FRANCHISE OF WOMEN.

577. **—Women May Vote on Certain Questions.**—At any election hereafter held in any village, township, city, county or school district at which any question involving the direct expenditure of public money or the issue of bonds is submitted to a vote of the electors, every woman, who possesses the qualifications of male electors and has property assessed for taxes in any part of the district or territory to be affected by the result of such election, shall be entitled to vote thereon. § 3864.

The propositions herein referred to shall be printed upon ballots which shall not contain any other question to be voted upon at such election. All elections at which women vote shall be conducted and all ballots shall be cast, counted and canvassed in the manner provided for by existing law, except where the contrary is herein expressed. § 3867.

See Const. iii, 4.

578. **Duties of Boards of Registration.**—It is the duty of every board of registration, upon such days as boards of registration are required to be in session, to register the names of all women who will be entitled to vote upon any question involving the direct expenditure of public money or the issue of bonds at any subsequent election. No woman shall be regis-

tered unless she makes personal application to the board of registration. It is unlawful for said boards of registration to register any woman under authority of this act, unless she possesses the qualifications prescribed for an elector in section one of article three of the constitution and has property assessed for taxes. Any woman who possesses the qualifications of male electors and owns property jointly with her husband or other person, or who owns property on contract, and pays the taxes thereon, shall be entitled to register and shall have the right to vote on all such propositions as are referred to in this act. In all school elections at which the question of the direct expenditure of public money or the issue of bonds is to be voted upon, women shall be permitted to vote without registration in the manner now provided in the general school law. § 3865.

579. **Separate Registers to be Used.**—It is the duty of the various village, township and city clerks to procure and furnish to the various boards of registration a separate register in which shall be written the names of all women entitled to registration under authority of this act. The various boards of registration shall give notice of the time and place where they will be in session and shall conduct the registration in the manner authorized by § § 3592-3620-3866.

See Secs. 329 and 580 of this Guide.

580. **Women May Vote for Presidential Electors.**—All women citizens of the United States above the age of twenty-one years, having resided in the State six months and in the township or ward twenty days next preceding any presidential election, shall be allowed to vote at such election for presidential electors, subject to the provisions of law regulating the votes of male electors. Act 191 of 1917, Sec. 1.

Separate ballot boxes and ballots shall be provided for women in each election precinct, which ballots shall contain the names of the candidates for presidential electors who are to be voted for, and the ballots cast by women shall be canvassed with the other ballots cast for presidential electors. Id., Sec. 2.

Prior to any presidential election women shall register in the same manner as male voters, separate registration books being provided for this purpose in each voting precinct by those whose duty it is to provide registration books for male voters. Id., Sec. 3.

See Sec. 329 of this Guide.

CHAPTER XXVII.

VOTING MACHINES AT ELECTIONS.

[For acts relative to the use of the "Rhines Vote Recorder," "Myers Ballot Machine" and the "Abbott Voting Machine," see § § 3885-3949, Compiled Laws of 1915.]

581. **Board of Supervisors May Purchase and Direct Use of Voting Machines.**—The board of supervisors of any county in the State shall have the power to direct the use of voting machines in and for each voting precinct in the county, at all elections held therein. In case said board determines to use voting machines in the elections to be held in said county, it shall be the duty of said board to purchase such a number of machines and of such type as shall seem necessary and proper for the safe and correct conduct of said elections. The board of supervisors is hereby authorized to pay for said voting machines out of the general

fund of said county, and to make such contract for the purchase of such machines with regard to price, manner of purchase and time of payment as to the said board shall seem proper, and in estimating the amount of taxes to be levied for the general fund, such amount shall be added, extending over such time as may be required to fully pay for such machines. § § 3950-52.

582 Refund of Purchase Price to Townships, Etc.—In case any city, township or village of such county in which the use of voting machines shall have been determined upon by the board of supervisors, shall have previously purchased such machines, such city, township or village shall have returned to it from the general fund of said county, such pro rata amount of the whole cost for the county as the number of voting precincts so previously provided by any such city, township or village, bears to the whole number in the county, but not exceeding the amount previously paid by any such city, township or village. § 3953.

583. Use of Voting Machines Authorized.—At all State, county, city, village and township elections hereafter held in the State of Michigan, ballots or votes may be cast, registered, recorded and counted by means of voting machines, as hereinafter provided. Act 287 of 1907, Sec. 1. § 3955.

This act refers to elections at which persons are given public offices by a plurality of all the electors voting thereat, and does not authorize the use of voting machines at primary elections.—Line v. Election Com'rs., 154 / 329. But for a later enactment authorizing the use of voting machines at primary elections, see Secs. 676 to 681 of this Guide.

A vote by voting machine is a proper vote by ballot.—Detroit v. Election Inspectors, 139 / 548; Henderson v. Saginaw Election Com'rs., 160 / 36.

584. Townships May Purchase Voting Machines.—The township board of any township in the State, may, by a majority vote, authorize, purchase and order the use of any thoroughly tested or reliable voting machine in any one or more voting precincts within said township until otherwise ordered by the officers adopting the same. Id., Sec. 2. § 3956.

585. Construction of Voting Machines.—A voting machine to be purchased as provided in Section 584 must be so constructed as to provide facilities for voting for the candidates of at least seven different parties or organizations, and must permit all voters to vote for any person for any office although not nominated as a candidate by any party or organization, and must permit voting in secrecy. It shall also be so constructed that votes may be cast thereon for constitutional amendments or any other public measure; it must also be so constructed as to provide for at least thirty candidates for each party organization at any and all elections and said machine must be constructed of good and durable material in a workmanlike manner, and also so constructed that it can be easily and conveniently operated by inspectors of election and the voters; it must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is entitled to vote for more than one person for that office, and it must afford him an opportunity to vote for any and all persons for that office as he is by law entitled to vote for and no more, at the same time preventing his voting for the same person twice. It may also be provided with one ballot in each column containing the words "Presidential electors" preceded by the party name and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors. Id., Sec. 3. § 3957.

586. Number May Purchase.—The township board of any township adopting a voting machine, shall as soon as practicable thereafter, provide for each election district, a voting machine in complete working order and shall thereafter keep the same in repair and shall have the custody thereof, and of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election district or districts in the township as the officers adopting same may determine. More than one voting machine may be provided and used in any election precinct. Id., Sec. 4. § 3958.

587. Payment for Machines.—The township board of any township on the adoption and purchase of voting machines may provide for the payment thereof in such manner as it deems for the best interest of the township, and may for that purpose issue bond certificates of indebtedness or other obligations which shall be a charge on the township, as the case may be. Such bonds, certificates or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. But in case any township of a county in which the use of voting machines shall have been determined upon by the board of supervisors, shall have previously purchased voting machines, such township shall have returned to it from the general fund of said county, such pro rata amount of the whole cost for the county as the number of voting precincts so previously provided by any such township bears to the whole number in the county, but not exceeding the amount previously paid by the township. Id., Sec. 5. § 3959.

588. Ballot Labels, Arrangement of Names, Etc.—All ballot labels shall be printed in black ink, on clear white material of such size as will fit the ballot frame and in plain type as the space will reasonably permit. The party vignette and the name for each political party represented on the machines shall be prefixed to the name of the candidates for such party. The names of candidates for office to be voted for at such election shall be placed upon such machines in the same order that the names of candidates for office are now required to be placed upon printed ballots by the general election law. Where candidates for local offices in any township are to be voted for at the same election with State or county candidates, the names of the candidates for such offices shall be placed last upon such voting machines, following the name of candidates for State, county and other offices to be voted for at such election. The order in which the names of such candidates for local offices shall be placed upon such machines shall be prescribed by the board of election commissioners of the township. Where amendments to the constitution or other questions are to be voted on, such amendments or questions shall be placed on the voting machine, upon the portion of the keyboard provided therefor. Two or more independent nominations may be placed upon the same party row and such candidates shall be voted for individually. The party lever or device, if any, in connection with such party row, shall be locked whenever such party row does not contain the names of candidates of a party organization or the names of an independent

body which may have nominated candidates for more than one office. The vignettes adopted for such independent candidates, if any, shall be printed upon the ballot labels in connection with the names of such candidates. Id., Sec. 6. § 3960.

589.—Duties of Election Commissioners.—Where voting machines are purchased or are used the election commissioners of the township shall not be required to print and furnish paper ballots for election districts using voting machines, except for any question or matter that cannot be provided for by the voting machines. The board of election commissioners of the county shall cause to be printed ballot labels or slips containing the names of candidates for all offices to be voted for or questions to be voted upon, except when township officials only are to be elected, at which time the township clerk shall provide such ballot labels for use upon such voting machines, and shall forward the same to the board of election commissioners of each township within the county where such voting machines are used at least five secular days before the day of election. But whenever local officers are to be elected at any such general election, it shall be the duty of the township clerk to file with the board of election commissioners of the county, the titles of offices, the names of all the candidates to be voted for, and all questions or propositions to be voted upon within such township at that election. Id., Sec. 6. § 3960.

As to printing of ballot labels, see also Sec. 444 of this Guide; for primaries, see Sec. 678.

590. Ballot Labels, Instruction Ballots, Etc.—Two additional sets of ballot labels shall be provided for each polling place for each election for use on the voting machine and the same shall be delivered by the board of election commissioners to the election board of each voting precinct. Envelopes for the delivery and return of the keys of the voting machines shall be furnished by the county clerk upon which shall be printed or written the number of the machine, the ward or precinct and the record of the protective counter, if any, and the numbers of the seals before and after the election; each of which shall be correctly filled out and be delivered to the proper board or official. In all general elections where voting machines are used there shall be furnished by the board of election commissioners of the county, to the election board in each precinct, a sufficient number of instruction ballots of the reduced size, showing the key board of the voting machine as it will appear after the official ballots are arranged for voting on election day with the titles of offices, names of candidates, questions, etc., and with illustrations and brief instructions how to vote. Id., Sec. 7. § 3961.

591. Explain Operation of Machine.—One of such models containing fictitious names of candidates must be delivered to each board of elections for use on election day, and one of said board, or someone appointed by them, shall offer to exhibit and explain the operation of the voting machine by use of the model, to each voter before such voter shall be allowed to pass within the guard rail to vote. Printed instructions how to vote, circulated to voters, must conform to the instructions approved by the official providing ballots, and adapted to the machine used. Id., Sec. 7a. § 3962.

592. Voting Machine Custodian, Duties, Etc.—The clerk of each

county in which voting machines are to be used, in whole or in part, shall cause the proper ballot labels to be placed on the machines and the machines in every way put in order, set and arranged, ready for use in voting at such election; and for the purpose of so labeling, putting in order, setting and arranging the machine, shall employ one or more competent persons who shall be known as voting machine custodian or custodians, sworn to perform their duties honestly and faithfully, and for such purpose shall be considered as officers of election and shall be paid for the time spent in the discharge of their duties, in the same manner as other election officers are paid. In counties where elections are in charge of a superintendent of elections, the superintendent and his deputies shall act as such custodians. Said custodian or custodians shall, under the direction of the said county clerk, cause the machines to be properly labeled, put in order, set and arranged. In preparing a voting machine for an election, the custodian shall, according to the printed directions furnished, arrange the machine and the ballots therefor so that it will in every particular meet the requirements for voting and counting at such election, and thoroughly test the same. Before preparing the voting machines for any election, written notice shall be mailed to the election commissioners of the township in which the machine or machines are to be used, stating the time and place where the machines will be prepared, at which time such election commissioners shall be afforded an opportunity to see that the machines are in proper condition for use in the election. Such election commissioners shall be sworn to faithfully perform their duties and shall be regarded as election officials but shall not interfere with the custodian or assume any of his duties. When a machine has been prepared for the election, it shall be the duty of such election commissioners to make a certificate in writing, which shall be filed in the office of the county clerk, stating the number of the machine, the location of the polling place, whether or not all the candidates and question counters and the public counter are set at zero, the number registered on the protective counter, if one is provided, and the number of the metal seal with which the machine is sealed. Immediately after the election commissioners have inspected and certified to the correct preparation of each of the voting machines to be used within the township, within which they are authorized to act, the custodian shall seal each of said machines with a numbered metal seal and shall make out a similar statement certifying to the correct adjustment of each of such machines and such certificate shall be signed by the custodian and filed in the office of the clerk of the township in which such machine or machines are to be used. Each voting machine shall be furnished with a lantern or other device for lighting, which shall give sufficient light to enable voters while in the booth or other enclosure to read the ballot labels, and suitable for use by the election officers in examining the counters of the machine. It shall be the duty of the election commissioners under the direction of the custodian, to cause the voting machines to be delivered at the respective polling places in which they are to be used at least one hour before the time set for opening the polls: Provided, That police protection shall be furnished by the local authorities whenever the officers charged with the duty of preparing such machines shall deem such protection necessary to prevent possible injury of any

one or more voting machines, but such machines shall at all times be under the supervision of such officer, except during the hours prescribed by law for voting on election day. Id., Sec. 7b. § 3963.

593. **Instructions to Inspectors of Election.**—At least ten days prior to each election, the custodian or custodians of the voting machines shall instruct each board of election inspectors that is to serve in an election district, in the use of the machine, and in the duty of inspectors of election, in accordance with the law and the printed instructions suitable to the machine used, copies of which printed instructions shall be mailed to each election officer prior to the time set for such instruction meetings. The custodian shall give to each inspector of election, that has received such instruction and is fully qualified to properly conduct the election with the voting machine, a certificate to that effect. For the purpose of giving such instruction, the custodian shall call such meeting or meetings of the inspectors of election as shall be necessary. Such custodian shall without delay thereafter file a report with the board or official in charge of elections stating that he has instructed the election officers, giving the names and postoffice addresses of such election officers and the time and place where such instruction was given. The inspectors of election of each election district in which a voting machine is to be used, shall attend such meeting or meetings as shall be called for the purpose of receiving such instructions concerning their duties as shall be necessary for the proper conduct of the election with the voting machine. Each inspector of election that shall qualify for and serve in the election shall be paid one dollar for the time spent in receiving such instruction in the same manner and at the same time as he is paid for his services on election day. No inspector of election shall serve in any election at which a voting machine is used, unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine, and has received a certificate to that effect from the custodian of the machines; but that this shall not prevent the appointment of an inspector of election to fill a vacancy in an emergency. Id., Sec. 7c. § 3964.

594. **Ballot Clerks and Gatekeepers May be Dispensed With.**—Ballot clerks and gatekeepers may be dispensed with in voting precincts in any township where voting machines are used. Id., Sec. 8. § 3965.

595. **Duties of Inspectors of Election.**—The inspectors of election and poll clerks of each district shall meet at the polling place therein, at least a half hour before the time set for the opening of the polls at such election, and shall proceed to arrange within the guard rail the furniture, and voting machine for the conduct of the election. The inspectors of election shall then and there have the voting machine, ballots and stationery required to be delivered to them for such election, and the registry of the electors required to be made and kept therefor. The inspectors shall thereupon cause at least two instruction cards and if printed in different languages at least two of each language, to be posted conspicuously within the polling place. If not previously done, they shall insert in their proper place on the voting machine the ballot labels containing the names of the offices to be filled at such election, the names of the candidates nominated therefor and the question, if any, to be voted upon. The keys of the voting machines shall be delivered to the election officers at

least one-half hour before the time set for opening the polls, in a sealed envelope, on which shall be written or printed the number and location of the voting machine, the number on the seal and, if provided with a protective counter, the number registered on such counter as reported by the custodian. The envelope containing the keys shall not be opened until at least two of the inspectors shall be present at the polling place and shall have examined the envelope to see that it has not been opened. Before opening the envelopes, all election officers present shall examine the number of the seal on the machine, also the number registered on the protective counter, if one is provided, and shall see if they are the same as the numbers written on the envelope containing the keys. If found not to agree, the envelope must not be opened until the county clerk, if it be a general election, or the township clerk, if it be an election at which local officers only are elected, or the custodian duly appointed and authorized to act for such clerk, shall have been notified and shall have presented himself at the polling place for the purpose of re-examining such machine and shall certify that it is properly arranged. If the numbers on the seal and protective counter, if one is provided, are found to agree with the numbers on the envelope, the inspectors shall proceed to open the doors concealing the counters. Before the polls are opened for the election, each inspector shall carefully examine every counter and see that it registers zero, and the same shall be subject to the inspection of the official challengers who may be present. If any counter for a candidate or question is found not to register zero, the inspectors of election shall immediately notify the county, or township clerk, under whose direction such machine has been prepared for election and said clerk or the custodian appointed by him shall adjust the counter at zero, re-examine the machine and certify to its proper adjustment for use in the election. During the examination of the voting machine by the inspectors of election the operating lever of the machine shall remain locked against voting until the polls are formally opened and shall not be operated except by the electors in voting. Id., Sec. 9. § 3966.

An inspector of election shall attend to the locking and unlocking of the machine and it shall be his duty to prevent said machine from being unlocked at any time during said election, except when a voter is within for the purpose of voting, and whenever a voter has voted the inspector shall lock the machine and it shall remain so until another voter enters for the purpose of voting. Id., Sec. 16. § 3973.

596. Irregular Ballots.—Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office are herein referred to as "Irregular Ballots." To provide any and every voter who desires to vote for any person whose name is not on the machine or for any combination of names that could not be voted with the machine, with means by which he can so vote, the inspectors of election shall, if the type of machine so require, prior to the opening of the poll, place inside the curtain or other enclosure enclosing the face of the machine a reasonable number of ballots suitable to the machine used, together with pencil and appliances necessary for the voting thereof. The inspectors of election shall also cause to be placed in a conspicuous place inside the polling place at least two cards not less than twelve inches square on which shall be plainly printed full and explicit instructions for

the use of such ballots. A voter desiring to vote as aforesaid may fill out one of said ballots with the names of the persons he desires to vote for, but which could not be voted with the machine, designate for which of the candidates he desires the remainder of his ticket to be voted, place the same in or upon the appliance provided therefor, and deposit such ballot in a receptacle on the machine provided for the irregular ballots or in a ballot box and the ballot so cast shall be counted at the close of the election, if it contains a name or names or a combination of names that could not have been voted with the machine. Any person removing from said enclosure any of said ballots or appliances provided for the voting of the same, except for the purpose of using the same in a manner herein provided, shall be deemed guilty of a misdemeanor and upon conviction thereof before a court of competent jurisdiction shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail of the county in which the offense shall be committed for a period of not exceeding ninety days or both such fine and imprisonment in the discretion of the court. Emergency ballots shall also be provided by the board of election commissioners of the county, having suitable blank spaces to permit the voter to vote a straight party ticket, or if he desires to split his party ticket, to indicate the party ticket the majority of whose candidates he favors, together with the names of such other candidates for which he desires to vote. Such ballots shall be used only in emergency and upon special permission of the board or official whose duty it is to provide ballots for the election and who shall prepare such ballots and same shall be held by the township clerk subject to the order of the county clerk or other authorized person. It shall not be necessary to provide such emergency ballots for each election, unless same shall have been used, destroyed or lost, in which case similar ballots shall again be provided. If at any time during the election the voting machine is disabled and cannot be repaired and no other voting machine can be had to supply its place, an emergency shall be declared to exist and the voting thereafter at that election, in that voting precinct, shall be by ballot, in the manner hereinafter provided in this section; the board or official having the custody of such emergency ballots shall when so directed, supply a sufficient number of such ballots to the election board for use by the voters. One of such ballots shall be delivered by the election board to each voter who may thereafter appear to vote and shall be voted and counted subject to the provisions of the general election law, except as herein otherwise provided. Such ballots shall be numbered consecutively from one up, which number shall be printed upon a perforated stub. The number of the ballot given to each voter shall be written against the voter's name, at the time of the delivery of such ballot and when such ballot is returned by the voter the number thereon shall be compared with the voter's number on the poll book, and if they agree, the stub number shall then be torn off and the ballot deposited in a ballot box provided therefor, but if the numbers do not agree the ballot shall not be received and shall be void. The election board shall immediately ascertain the cause of such discrepancy and shall have power to arrest any person who is shown guilty of a direct or indirect attempt to cast a fraudulent ballot. Upon conviction any such person shall be punished as herein provided. Id., Sec. 10. § 3967.

Voting machines cannot be used at an election at which the type of machine in use cannot

be so arranged as to afford the voter opportunity to vote for any desired combination of the candidates of all parties.—Helme v. Election Com'rs, 149 / 390. Machines must be arranged to permit the elector's choice of candidates without disclosure to inspectors or other persons.—Id.

597. When Irregular Ballots Not to Be Voted.—With the exception of persons not nominated or for a combination of names that cannot be voted with the machine and except for voting for presidential electors, no irregular ballot shall be voted for any person for any office, whose name appears on the machine as a nominated candidate for that office. An irregular ballot must be cast in its appropriate place on the machine or it will be void and not counted. Id., Sec. 12. § 3969.

598. Challenged Persons.—When the right of any person offering to vote is challenged the inspector of election shall tender to him such of the oath required by the election law of the State as he may claim to contain the grounds of his qualifications to vote, and if the voter takes such oath he must be allowed to cast his vote upon the machine. If the challenge is not withdrawn the inspectors of election shall write opposite the name of such voter in the registration book the word "challenged," and if such voter then enters the machine to vote, the election officer shall write the word "sworn" opposite the voter's name in the poll book. If sufficient evidence is produced by any challenger or elector who will make affidavit on blanks provided therefor, that he believes such voter is not a qualified voter, giving the reasons for same, or if such voter is known to the inspectors of election, not to be a qualified voter, they shall immediately cause the arrest of such voter and upon conviction such voter shall be deemed guilty of a felony, punishable as provided in section 153 of the General Election Laws. Id., Sec. 11. § 3968.

Section 153 above referred to is § 3715, C. L. of 1915.

Challenged votes by the voting machine cannot be identified under any provisions of the statute.—Henderson v. Saginaw Election Com'rs, 160 / 36. Act 214 of 1909, is not unconstitutional in providing that the votes of challenged persons must be accepted after the voters take the required oath.—Id.

599. Placing of Machines.—The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers and the public. The voting machine shall be placed at least three feet from every wall and partition of the polling place and at least three feet from the guard rail. The guard rail shall be constructed at least three feet from the machine with openings to admit electors to and from the machine. Id., Sec. 13. § 3970.

The front of the voting machine shall be in full view of the inspectors and bystanders at all times during the election, and the machine shall be so placed or equipped that the keyboard of the machine shall be concealed from the view of all persons, except the voter, so that the voting of each voter shall be in secrecy. Id., Sec. 15. § 3972.

600. One Voter at a Time Permitted to Pass Within Rail.—Only one voter at a time shall be permitted to pass within the guard rail to vote. The operating of the voting machine by the elector while voting shall be secret and obscure from all other persons, except as provided by this act in cases of voting by assisted electors. Id., Sec. 14. § 3971.

601. Time Voter May Remain in Booth.—No voter shall have the right to remain within the voting machine booth longer than one minute and if he shall refuse to leave it after the lapse of one minute, he shall be removed by the inspectors. But the inspectors may grant him further

time in their discretion if others are not waiting to vote. Id., Sec. 14. § 3971.

602. Assistance to Voters.—In case any elector, after entering the voting machine booth, shall ask for further instructions concerning the manner of voting, two inspectors of opposite political parties shall give such instructions to him, but no inspector or other election officer or person assisting at any election, shall set such machines for any such elector, or move, turn or operate any lever or other part or mechanism of such machine for such elector, or in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question or proposition. After receiving such instructions such elector shall be left alone in the voting machine booth and shall vote as in the case of an unassisted voter, and no inspector or other election officer or person assisting at any election shall be present in such voting machine booth when any such elector sets or operates such machine. When an elector shall make oath that he cannot read English such voting machine shall be set for him in the presence of the challengers of each political party having a challenger at such voting place, by an inspector designated by the board for that purpose, but no such inspector shall operate such machine for any such elector. When an elector shall make oath that because of physical disability he cannot set or operate such machine, or when such disability shall be made manifest to said inspectors, such machine shall be set and operated for him in the presence of the challengers of each political party having a challenger at such voting place, by an inspector designated by the board for that purpose. Id., Sec. 17. § 3974.

603. Defacing or Injuring Machine.—No voter or other person shall deface or injure the voting machine or the ballot labels thereon. The inspectors of election shall, at such intervals, as they may deem proper or necessary, examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrong-doer and to repair any injury. Id., Sec. 18. § 3975.

604. Canvass of Votes.—As soon as the polls of the election are closed, the inspectors of election thereat shall immediately lock the voting machine against voting and open the counting department in the presence of the challengers and all other persons who may be lawfully within the polling place, giving full view of all the counter numbers. The chairman of the board of inspectors shall, under the scrutiny of another inspector, in the order of the offices as their titles are arranged on the machine, read and announce in a distinct voice the designating number and letter of each counter (if any) for each candidate's name and the result as shown by the counter numbers, and shall then read the vote on each constitutional amendment, proposition or other question. He shall also in the same manner announce the vote as recorded for each office on the irregular ballots, if any. The candidate counters shall not in any case be read consecutively along the party row or column, but shall always be read along the office column or row, completing the canvass for each office before proceeding to the next, and the vote as registered shall be entered by the clerks in figures, directly to the inspectors' statement in ink, on the space which has the same designating number and

letter. After recording the vote, as shown by the counters, on the inspectors' statement of canvass, the figures shall be verified by being called off in the same manner from the counters of the machine by another inspector, and if found correct, the inspectors of election shall write each candidate's vote in words in the space provided therefor. If the name of an endorsed candidate appears on the ballot labels more than once and the counter of such a candidate, who has been nominated more than once for an office to which two or more persons are to be elected, are coupled for simultaneous action, so that the vote counted by any one of the counters of such candidate will also be counted by the other counters of such candidate, the record of the vote on but one of such counters shall be taken, and the record of the vote on the other counters shall not be taken but shall be entered as zero. When the counters of a candidate who has been nominated more than once for an office to which but one person is to be elected, in which case such counters shall not be coupled for simultaneous action, the record of the vote on each counter of such candidate shall be taken and added together: Provided, That the name of any candidate shall appear more than once on the ballot labels. The counter compartment of the voting machine shall remain open until the statement of canvass and all other reports have been fully completed and signed by the election board. During such time any challenger of any party, duly accredited as provided by the election law, who may desire to be present shall be admitted to the polling place. Id., Sec. 19. § 3976.

605. Proclamation of Result; Corrections.—The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the chairman of the board of inspectors who shall read the name of each candidate, with a designating number and letter of his counter (if any), and the vote registered on such counter; also the vote cast for and against each question submitted. During such proclamation ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine, and any necessary corrections shall then and there be made by the election board, after which the doors of the voting machine shall be closed and locked. Id., Sec. 19. § 3976.

606. Locking and Sealing of Machines.—Before adjourning the board shall, with the seal provided therefor, so seal the operating lever of the machine that the voting and counting mechanism will be prevented from operation. Such machines shall remain so sealed for a period of thirty days after the election and shall not be operated during such time except as herein otherwise provided. Id., Sec. 19. § 3976.

607. Recanvass of Votes.—Whenever it appears that there is a discrepancy in the returns of any election district, the board of canvassers of the county, if it be a general election at which county or state officers are elected, or the board of canvassers of the township, if it be a township election at which township officers only, are elected, shall summon the inspectors of the election district in which the discrepancy is alleged to have occurred and said inspector shall, in the presence of said board of canvassers and the custodian, make a record of the number of the seal, the number on the protective counter, if one is provided, and shall open the counter compartment of said machine, and without unlocking

the machine against voting, shall recanvass the vote cast thereon. Before making such recanvass the said board of canvassers shall give sufficient notice in writing to the county clerk and to the custodian who prepared the machine for the election, of the time and place where said recanvass is to be made. If upon such recanvass it shall be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the custodian, in the presence of the inspectors of election and the said board of canvassers, shall unlock the voting and counting mechanism of said machine and shall proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the return from said machine. Before testing the machine, the counters in the party row or column in which the discrepancy is alleged to have occurred shall be set at zero, after which each of such counters shall be operated at least one hundred times. After the completion of said examination the custodian shall then and there prepare a statement in writing giving the result thereof, and said statement shall be witnessed by the persons present and shall be filed with the secretary of the county board of canvassers. Any candidate voted for at any election who conceives himself aggrieved on account of any fraud, error or mistake in the canvass of the vote by the inspectors or in the returns made by the inspectors of election, may file a written petition with the clerk of the board of canvassers as provided in § § 3739-40, C. L. of 1915. Such sections, as far as practicable, shall apply except as herein otherwise provided. Id., Sec. 20. § 3977.

For recounts under Michigan Election Law, see Sections 540 to 554 of this Guide.

608. Duties of Secretary of State.—The secretary of state shall furnish the necessary inspectors' statement and canvassing sheets and samples of the certificates, envelopes, etc., suitable to the machine used, to the board or officer whose duty it is to provide ballot labels and other election supplies for each election, to be delivered to the respective boards of election inspectors to make returns where voting machines are to be used. The form of the inspectors' statement shall be like that now provided by the secretary of state, except that the inspectors' certificate contained therein shall in addition certify to the number of the machine used, the number on the protective counter, if any, the number on the seal, and that all candidate counters, question counters and the public counter registered zero before the polls open; also the record on the protective counter and on the seal with which the machine is sealed by the inspectors, the number on the public counter and the number of names on the poll list after the polls close. The board or official whose duty it is to provide ballot labels shall notify the secretary of state, giving the order and titles of the offices and the number of such inspectors' statements as will be required and such number plus ten per cent, shall be furnished by the secretary of state to said board or official, at least thirty days prior to election at which they are to be used. As soon as the names of all candidates for the several offices to be elected at that election are filed as required by law, the board or official whose duty it is to prepare the ballot labels for the machine, shall forthwith have the names of each regularly nominated candidate, together with the designating number and letter, if any, corresponding to each of candidates' counter on the voting machine, printed

in the space provided therefor, immediately before the word "received" in the inspectors' statement. In case of the death, resignation or failure to qualify of any of such candidates after such inspectors' statements are printed, a slip may be furnished giving the name, designating number and letter, if any, of the candidate substituted therefor and same shall be pasted, before the delivery of the inspectors' statements to the board of inspectors, over the candidate's name who died, resigned or failed to qualify. It shall be the duty of the clerk of each township which has or may hereafter purchase or adopt voting machines to immediately notify the secretary of state of such fact. Id., Sec. 21. § 3978.

609. **Election Laws to Govern.**—All the provisions of the election laws now in force and not inconsistent with the provisions of this act. shall apply with full force to all townships adopting the use of voting machines. Id., Sec. 22. § 3978.

PART VI.

PRIMARY ELECTIONS.

CHAPTER I.—The Primary Election Law.
CHAPTER II.—Absent Voters at Primary Elections.
CHAPTER III.—Voting Machines at Primaries.

CHAPTER I.

THE PRIMARY ELECTION LAW.

[Act 281 of 1909, as Amended, being § § 3517-3564 Compiled Laws of 1915.]

610. Nominations by Direct Vote.—Whenever any primary election shall be held in this state or in any city, county, or district in this state, pursuant to the provisions of this act, the nomination of candidates for the offices herein named, by each political party, shall be made by direct vote of the registered and qualified voters of such political party in the State or in any district, county, or city in this State, as the case may be, in the manner hereinafter provided. Act 281 of 1909, Sec. 1. § 3517.

611. Primaries Conducted Same as General Elections.—All primary elections shall, except as herein otherwise provided, be conducted and regulated as near as may be in every particular as prescribed by law for the regulation and conduct of general elections. The provisions of the general election law shall apply to primary elections with respect to the giving of notice of registration and election, in fixing places for holding such election, providing the ballot boxes with the necessary equipment and supplies, in giving notice of meetings of boards of canvassers, in canvassing and certifying the result of the primary elections and in giving notice of primary elections except as the contrary may be herein expressed, and all officers required to perform similar duties under the general election law shall be required to perform such duties under this act, with like power and compensation. All expenses of primary elections shall be defrayed from the same funds from which are defrayed the expenses of an election. Id., Sec. 2. § 3518.

The provision that primary elections be conducted like general elections "as near as may be in every particular," requires the same safeguards against tampering with the ballots as in case of general elections. A seal is a necessary part of the equipment under the general election law.—Ritze v. Bd. of Canvassers of Iron Co., 172 / 423.

612. Construction of Words.—The words "primary" or "primary election," as used in this act, shall be construed to mean an election for the purpose of deciding by ballot who shall be the nominees of political parties for the offices named in this act or for the election by ballot of delegates to political conventions. The words "qualified elector" shall be construed to mean an elector who is qualified under the general election law, to vote for a member of the legislature in this State. Id., Sec. 3. § 3519.

613. Registration of Primary Electors.—No person shall be permitted to vote at any primary election held in this State, unless he shall be a registered and qualified elector of this State: Provided, however, That

any qualified elector may be registered and be eligible to vote at any primary election if he shall appear in person before the city or township clerk or other officer in charge of the registration book, and take the oath required as to qualifications for registration, and request that his name be registered therein. The inspectors shall register any person who shall on any primary day appear and make oath or affirmation to the effect that he is a qualified elector in such precinct, or when they personally know him to be such. Any person registered on any primary day as prescribed herein, shall be entitled to vote at the succeeding election without other registration. There shall be no other registration day or days for either a primary, a general or a city election, except that prescribed by the general election laws and in this act. Id., Sec. 4. § 3520.

Sections 5, 6, 7, 8, 9, 10 and 11, providing for party enrollment of electors, were repealed by Act 118, P. A. 1913. But the amendment of 1915 (Act 313) provides for printing separate party tickets. See Sections 624 and 625 of this Guide.

614. Nomination of Circuit Judges.—All candidates for circuit judge shall be selected in accordance with the provisions of this act; but all duties imposed upon city or county clerks shall in the case of judicial districts composed of more than one county be performed by the secretary of state. The provisions of this act relative to the nomination of candidates for district offices are as far as possible made applicable to the election of candidates for circuit judge. The primary election for the election of candidates for circuit judge shall be held on the first Wednesday in March prior to the election. The vote cast for candidates in judicial districts shall be counted and canvassed in the same manner as the vote cast on the election of circuit judge. Id., Sec. 15. § 3524.

It was the intention of the legislature to fix the first Wednesday in March for the nomination of candidates for county offices by primary petitions.—Mandell v. Farrell, 164 / 585.

615. Date of General Primary.—A general primary election for all political parties shall be held in every election precinct in this State on the last Tuesday in August preceding every general November election, at which time the registered and qualified voters of each political party shall vote for party candidates for the office of governor, lieutenant governor, and United States senator: Provided, That no nomination for the office of United States senator shall be made, unless such official is to be elected at the next session of the legislature. A general primary election for all political parties shall also be held on the first Wednesday in March prior to the spring election at which time the registered and qualified voters of each political party shall vote for candidates for county offices filled at the spring election and for candidates for circuit judge. Whenever a regular or special primary election is required by the provisions of this act to be held in any county or district it shall be held in every portion thereof regardless of whether there are any candidates for any city offices to be nominated at such regular or special primary election. Whenever a special election shall be called to fill any vacancy in any office, the candidates for which are regularly nominated in accordance with the provisions of this act, a special primary election for all political parties shall be held in the city, county or district in which such vacancy occurs, on such day as may be fixed by the authority calling the special election, but not less than ten days prior to the date of such special election. In the case of a special primary election, it shall

be the duty of the proper board of election commissioners to prepare the necessary number of ballots for every political party participating in the last preceding regular primary election. The provisions of this act, relative to the printing, distribution, etc., of primary election ballots shall be applicable to the ballots prepared for use at a special primary election. The ballots shall be prepared in such manner that the voters of each political party may write, print or paste the name of a candidate thereon. The name of a candidate shall not be printed upon any ballots prepared for use at a special primary election. The provisions of this act shall be applicable in all particulars to special primary elections except as the contrary is indicated in this section: Provided, That it shall be unlawful for any person directly or indirectly at any regular or special primary election to distribute slips or pasters, or electioneer or induce or attempt to induce any person to vote or refrain from voting in a particular way within any polling place or within one hundred feet thereof. It shall be lawful to call a special election for the submission of any proposition on any regular or special primary election day. Id., Section 16. § 3525.

The provisions as to special elections apply only to such as are called to fill a vacancy, and petitions to nominate candidates for circuit judge are properly received and filed by the secretary of state pursuant to this section.—Oren v. Secretary of State, 171 / 590.

616. Nomination of District and County Officers.—In every congressional district in this State there shall be nominated at the said August primary election, by direct vote of the registered and qualified voters of each political party within such district, a party candidate for representative in congress. In every senatorial district in this state there shall be nominated at the said primary election, by direct vote of the registered and qualified voters of each political party within such district, a party candidate for state senator. In every representative district in this State there shall be nominated at the said primary election, by direct vote of the registered and qualified voters of each political party within such district, a party candidate or candidates, as the case may be, for representative in the state legislature. In every county in this State there shall be nominated at the said primary election by direct vote of the registered and qualified voters of each political party within such county, party candidates for county offices to be voted for at the November election following: Provided, That if upon the expiration of the time for filing petitions in any primary for city or county, it appears that there is no opposition to any candidate for any office, upon any ticket, then the city or county clerk, as the case may be, shall certify to the board of election commissioners, the names of all persons whose petitions have been properly filed, and the office for which such petitions were filed, and such persons shall be declared by such board of election commissioners nominees for the respective offices and such clerk shall forthwith notify the sheriff of the county and the several clerks of the townships interested, if any, and give notice that the primary will not be held as contemplated, giving the reasons therefor, and a public notice shall be given of such determination by a brief notice published by such clerk in a newspaper published in such county: Provided, That if upon the expiration of the time for filing petitions in any primary, the secretary of state shall find within a given district that there is no opposition for any office upon any ticket, he shall forthwith give notice to the clerks of the several

counties embraced, forthwith certifying the names of the candidates and the office to which they aspire, to the state board of canvassers, who shall declare them the nominees for the respective offices, and shall give notice to the clerks of the several counties embraced in such district, and if the clerk shall find that there is no opposition for any office upon any ticket for a county office, then it shall be the duty of such clerk to forthwith give notice to the several township clerks interested that a primary will not be held as contemplated, but in no event shall a primary election be abandoned in any township, city, county or district wherein there shall be opposition for any office, upon any ticket. In those instances in which the duties of two officers are combined, all nomination petitions shall include and name the two offices. Id., Sec. 17. § 3526.

617. **Delegates to County Convention.**—There shall also be elected at the August primary, by direct vote of the registered and qualified voters of each political party in said county, as many delegates in each township, ward or precinct, as the case may be, as such political party in such township, ward or precinct shall be entitled to by the call issued by the county committee of such political party for the county convention thereafter to be held by such political party within said county in that year for the purpose of electing delegates to the state convention called for the purpose of nominating candidates for state offices, to be voted for at the November election. In case of any vacancy in any delegation from any election precinct, township or ward, to the county convention, such vacancy shall be filled by the delegates present from the ward or township in which the vacancy occurs. The state central committee of each political party shall, at least thirty days before the August primary herein provided for, certify to the board of election commissioners of each county and to the chairman of the county committee of such party, the number of delegates to which such county shall be entitled in the state convention of such party; and the said state central committee shall apportion such delegates to the several counties in proportion and according to the number of votes cast for the candidates of such party for secretary of state in each of said counties respectively at the last preceding November election. The name of any candidate for delegate to the county convention shall not be printed upon the official primary election ballot, but one or more such names may be placed on such ballot by printed slips pasted thereon by the voter. The county committee shall in its call indicate whether delegates are to be selected by precincts or by wards. In cities in which there are no wards the delegates to which such cities are entitled shall be elected from the entire city. The chairman of the township, ward or city committee, as the case may be, shall notify by mail each person elected as a delegate to the county convention: Provided, That when a primary election is not held prior to the spring election delegates to the county convention shall be selected in a convention. Id., Sec. 18. § 3527.

618. **Preparation of Ballots.**—It shall be the duty of the board of election commissioners of each county in this State to prepare and furnish the necessary official primary election ballots except for city offices which may be required for use at the August primary. Such ballots shall contain the instructions as to the method of voting. Ballots other than those furnished by the board of election commissioners, according to the pro-

visions of this act, shall not be used, cast or counted in any election precinct, at any such primary election. The size of all official ballots shall be such as the board of election commissioners shall prescribe. It shall not be lawful for the printer of such ballots or any other person to give, or deliver to, or knowingly permit to be taken, any of said ballots by any person other than the board of election commissioners for which such ballots are being printed, or to print or cause or permit to be printed any ballots in any other form than the one prescribed by this act, or with any other name thereon, or with the names misspelled, or the names or devices thereon arranged in any other way than that authorized and directed by the said board of election commissioners. Id., Sec. 19. § 3528.

619. Instruction and Blank Ballots.—It shall and may be lawful for the chairmen of committees, and candidates named on the official ballot to procure any number of facsimiles of the ticket to be printed on yellow paper and to circulate the same for the purpose of the instruction of voters; and said colored ballot to have printed at the head the words "Instruction Primary Ballot". Id., Sec. 19. § 3528.

620. Names to be Included on Ballot.—The said ballots so prepared by the board of election commissioners in each county shall include the names of all candidates for the particular political party for the office of governor, lieutenant governor and United States senator, and shall include the names of all candidates for district offices, and in each county the names of all candidates for county offices. Proof copies of the ballots so prepared shall be placed on file in the office of the county clerk, at least ten days prior to each primary election, and one proof copy of such ballot shall be sent by registered mail with return receipt demanded, to each candidate at his last known address whose name appears upon such ballot. It shall be the duty of the board of election commissioners to correct such errors as may be called to their intention. No candidate shall have his name printed upon any official primary election ballot of any political party in any voting precinct in this State, unless he shall file nomination petitions according to the provisions of this act and all other requirements of this act have been complied with in his behalf. The said ballots shall also contain as many lines as there are delegates to be elected to the county convention by the particular political party. Such lines, upon which may be placed the names of proposed delegates to the county convention, shall be printed under the title "Delegates to county conventions" and no ballot for a delegate to a county convention of any political party shall be counted unless prepared and voted under authority of this act. Id., Sec. 20. § 3529.

621. Delegates to be Certified.—The chairman of the county committee of each political party shall certify to the board of election commissioners at least twenty-five days before the holding of such primary election, the number of delegates to which each election district of said county will be entitled at the county convention of said political party to be held in said county in said year for the purpose of electing delegates to a state convention called for the purpose of nominating party candidates for state offices. Id., Sec. 21. § 3530.

622. Number of Ballots to be Printed.—The number of ballots to be printed for use at any primary election in any election precinct shall be at least twenty-five per centum more than the total number of votes cast

therein at the last preceding election for secretary of state. The official primary election ballots shall be on file at the office of the county clerk, or city clerk, as the case may be, for public inspection at least three days prior to distribution for use at the primary election. Id., Sec. 22. § 3531.

623. **Distribution of Pamphlet Copies of Primary Law.**—It is the duty of the secretary of state to cause to be printed pamphlet copies of this act and to furnish to the county clerk of each county a sufficient number of copies thereof to enable said clerks to furnish at least two copies to each board of primary election inspectors in the county at the same time other supplies for an election are furnished. Id., Sec. 23. § 3532.

624. **Manner of Preparing and Printing Ballots.**—The official primary election ballots shall be prepared in the following form: At the top of each ballot shall be printed in large type, "Official primary election ballot." Underneath such heading shall be printed the date of the election at which the ballot is to be used, together with a designation of the political subdivision, as county, district, city, ward, et cetera, in which it is to be used. Then shall follow, in bold-faced type, the name of the political party and the vignette, below which shall appear the following instructions to voters: Make a cross in the square to the left of as many names for each office as may be indicated under the title of such office. Under this heading shall appear the names of the candidates seeking nomination for various offices on the ticket of the political party. The order of the offices on the ballot shall be the same, as near as may be, as is required by law in making up the ballot used at general elections. The title of the office shall be immediately above the names of the candidate or candidates for the nomination for such office, and under such title the words "Vote for," followed by the word "one" or "two" or such other word as will designate the number of candidates for the nomination to such office that may be voted for. The names of the different candidates shall be separated from each other by a light-faced rule with a square at the left of each name. The spaces devoted to the candidates for nomination to different offices shall be separated by a black-faced rule so as to separate each office division distinctly. The ballots for each election district shall be numbered consecutively in the manner provided by the general election law. All names of candidates of each political party shall be printed on a separate ballot and said ballot may be in one or more columns as may be determined by the board of election commissioners preparing the same. If two or more columns are used on the ballot, the columns shall be separated by a black line not less than one-twelfth of an inch in width. The names under the heading designating each official position, where there are more names than there are candidates to be nominated for such office, shall be alternated on the ballot of each party casting not less than ten per centum of the total vote cast in the county or other political subdivision at the preceding November election for the office of secretary of state. Said names shall be printed on the ballot in the following manner:

The forms shall be set up with the names of the candidates arranged alphabetically according to surnames. In printing each set of ballots for the several election precincts, the relative positions of the different names printed in each division shall be changed as many times as there are candidates in that division having the most names. As nearly as possible

an equal number of tickets shall be printed for each change. In making the changes of position, the printers shall take the line of type at the head of each office division and place it at the bottom of the division and shove up the column so that the name that before was second shall be first after the change. After the ballots are printed and before they are trimmed, they shall be kept in separate piles, one pile for each change in position, and shall then be piled by taking one ballot from each pile and placing it upon the pile to be trimmed in such manner that each alternative ballot shall have the names in a different relative position. Thereupon, the ballots shall be numbered consecutively on the upper right-hand corner upon the front of the ballot, with a perforated line across said corner and underneath said number so that said corner with the number thereon may be torn off. After the ballots shall be trimmed and done up in sealed packages, they shall be distributed for use at the primary election in the same manner as is now provided by law for the distribution of ballots to be used at general elections. Id., Sec. 24. § 3533. As Am. by Act 313 of 1915.

625. Form of Ballot.—Ballots shall be prepared in substantially the following form:

No.....

OFFICIAL PRIMARY ELECTION BALLOT

Primary election to be held ..... 19....
in the Township of ..... County of .....
or ..... District of the ..... ward of the
City of .....

..... Party.

(Vignette)

Make a cross in the square to the left of as many names for each office as may be indicated under the title of each office.

NATIONAL.	LEGISLATIVE.
United States Senator. Vote for one.	State Senator. ....District. Vote for one.
☐ JOHN DOE.	☐ JOHN DOE.
☐ RICHARD ROE.	☐ RICHARD ROE.
☐	☐
STATE.	Representative in State Legislature. ....District. Vote for one.
Governor. Vote for one.	
☐ JOHN DOE.	☐ JOHN DOE.
☐ RICHARD ROE.	☐ RICHARD ROE.
☐	☐
CONGRESSIONAL.	**COUNTY.**
Representative in Congress. ....District. Vote for one.	Judge of Probate. Vote for one.
☐ JOHN DOE.	☐ JOHN DOE.
☐ RICHARD ROE.	☐ RICHARD ROE.
☐	☐

Id., Sec. 24. § 3533.

626. **Nomination Petitions for U. S. Senator, Governor and Lieut. Governor.**—To obtain the printing of the name of any candidate of any political party for U. S. senator or for governor or lieutenant governor under the particular party heading upon the official ballots for any primary election held in this State, pursuant to the provisions of this act, there shall be filed with the secretary of state nomination petitions, signed by a number of registered and qualified voters residing in this State, equal to not less than two per centum nor more than four per centum of the number of votes that such party cast for secretary of state at the last preceding November election. Id., Sec. 25. § 3534.

627. **Nomination Petitions for District Offices.**—To obtain the printing of the name of any candidate of any political party for any district office under the particular party heading upon the primary election ballots in the various voting precincts of the district when such district is comprised of one county or less, there shall be filed with the county clerk of such county, nomination petitions, signed by a number of registered and qualified voters equal to not less than two per centum nor more than four per centum of the number of votes that said party cast therein for secretary of state at the last preceding November election, and in the case of a district office, in a district comprising more than one county, to obtain the printing of the name of any candidate of any political party under the particular party heading upon the primary election ballots in the various voting precincts of said district, there shall be filed with the secretary of state, nomination petitions, signed by a number of the registered and qualified voters residing in such district equal to not less than two per centum nor more than four per centum of the number of votes that the party cast therein for secretary of state at the last preceding November election: Provided, That when there are two or more candidates for representative in the state legislature to be nominated by each political party in a single representative district, to obtain the printing of the name of any candidate of any political party under the particular party heading upon the primary election ballots in the various voting precincts of such district, there shall be filed, with the county clerk of the county of which such district forms a part, nomination petitions signed by a number of registered and qualified voters residing in such district, equal to not less than one per centum nor more than four per centum of the number of votes that the party cast in such district for secretary of state at the last preceding November election, divided by the number of representatives to which such district is entitled in the state legislature. Id., Sec. 26. § 3535.

628. **Nomination Petitions for County Offices.**—To obtain the printing of the name of any candidate of any political party for a county office under the particular party heading upon the official primary election ballots in the various voting precincts of a county, there shall be filed with the county clerk of said county nomination petitions signed by a number of registered and qualified voters, who reside in the county, equal to not less than two per centum nor more than four per centum of the number of votes that such political party cast in such county for secretary of state at the last preceding November election. Id., Sec. 27. § 3536.

629. Qualified Petitioners.—Nomination petitions may be signed by registered and qualified voters residing in any part of a county for a county office, or any part of a district for a district office, or any part of the State for a state office. Id., Sec. 27. § 3536.

630. Nomination Petitions of Candidates of New Parties.—To obtain the printing of the name of any candidate of a new political party for United States senator, governor or lieutenant governor under the particular party heading on the official primary election ballots in the various voting precincts of this State, nomination petitions signed by at least three thousand registered and qualified voters residing in the State, shall be filed with the secretary of state. To obtain the printing of the name of any candidate of a new political party for a district, county or city office, under the particular party heading on the official primary election ballots in the various voting precincts of such district, county or city, as the case may be, such candidate shall file nomination petitions with the secretary of state, county clerk or city clerk, as the case may be, signed by at least one hundred registered and qualified electors residing in such district, county or city: Provided, That any qualified and registered elector who resides in the particular district, county or city, as the case may be, may sign the nomination petition of any candidate representing a new political party. Id., Sec. 28. § 3537.

631. Form of Nomination Petitions.—All nomination petitions shall be in the following form:

We, the undersigned registered and qualified voters affiliated with the .....party and residents of the city of..... .....or the township of .....in the county of ..... and State of Michigan, hereby nominate .....who resides at No. .....street, city of ....., or in the township of ....., in the county of ....., as a candidate of the .... party for the office of ....., to be voted for at the primary election to be held on the..... day of ....., as representing the principles of said party.

Name.	Residence.	Street number (in cities having street Nos.)	Date of signing.

Id., Sec. 29. § 3538.

632. Signing of Petitions, Inspection of, Etc.—It shall be unlawful for any registered and qualified voter to sign more than one such nominating petition for the same office, except where there are two or more candidates to be nominated for the same office, when he may sign as many petitions as there are persons to be elected to such office. The same rule shall apply to qualified electors in the signing of petitions of candidates of a new political party. It shall be unlawful for any candidate to wilfully and intentionally procure more names upon nomination petitions than the maximum number prescribed in this act. The various county clerks and city clerks shall prepare and keep on hand blank forms of nomination petitions for the use of the voters and candidates in said city or county. Nothing herein contained shall be construed to prohibit any candidate from having his own nomination petitions printed, but they must comply

substantially with the above form. All such nomination petitions shall be open to public inspection and subject to examination after being filed in the office of secretary of state, county clerk, or city clerk, in accordance with such reasonable rules and regulations as may be prescribed by such officers. The various officers named herein shall keep a public record of the nomination petitions filed in a book for that purpose, which record shall indicate the names of the candidates, the offices sought, and the dates when such nomination petitions were filed. Id., Sec. 30. § 3539.

633. Date of Filing Petitions, Certifying Names of Candidates, Etc.—The secretary of state and the various county clerks shall receive nomination petitions filed in accordance with the provisions of this act up to four o'clock, standard time, in the afternoon of the thirty-first day before the August primary, and in counties and districts where district and local officers are elected at a time other than the November election, the county clerk or the secretary of state shall receive nomination petitions filed in accordance with the provisions of this act up to four o'clock, standard time, in the afternoon of the twenty-first day before the time designated for holding a primary election in such district or county. The secretary of state, or county clerk, shall forthwith prepare and publicly expose in his office a list of the candidates for offices named in the nomination petitions filed in his office, as near as may be, as they will appear upon the official primary election ballots. If any nomination petitions contain more than the necessary percentage of names hereinbefore referred to, the excess over and above the necessary four per centum shall not be considered nor counted. The said secretary of state, or county clerk, shall forthwith, after the last day named herein for receiving and filing nomination petitions, certify to the proper board or boards of election commissioners in such county, district or in the State and to the proper county clerk, the names and postoffice addresses of all party candidates whose petitions meet the requirements of this act, together with the name of the political party and the office for which they are candidates. In case it is determined that the nomination petitions of any candidate do not comply with the requirements of this act, or if for any other cause such candidate is not entitled to have his name printed upon the official primary election ballots, it shall be the duty of the secretary of state, or county or city clerk, to immediately notify such candidate of such fact, together with a statement of the reasons why his name was not certified to the respective boards of election commissioners. Id., Sec. 31. § 3540.

634. Opening and Closing of Polls.—All primary elections for the nomination of party candidates for office shall be held by election precincts the same as general elections are held, and the polls thereof shall be kept open in the respective precincts for the same length of time. But the township board of any township may direct that the polls be held open until eight o'clock p. m., standard time. Id., Sec. 32. § 3541.

635. Election Inspectors, Ballots, Supplies.—Each primary election shall be presided over by a board of primary election inspectors, which board shall be composed of the members of the board of election inspectors provided for under the general election law. The provisions of the general election law relative to the furnishing and distribution of ballots, tally sheets, pencils, ballot boxes, arrangement of booths, initialing of ballots, powers and duties of inspectors, manner of conducting the elec-

tion, and all other matters shall be applicable hereto except insofar as the provisions thereof may be inconsistent herewith: Provided, however, That the number of persons constituting a board of primary election inspectors and the gate keepers may in the discretion of the township board or common council of cities, be reduced to such a number as may be actually necessary to properly perform the duties thereof, and in case the number is reduced said board or common council shall designate who shall act. Id., Sec. 33. § 3542.

636. Duty of Electors, Challenge of Voters.—After the polls are open at a primary election, any elector who is legally registered and qualified shall, before entering the booth, be furnished a ballot. It shall be competent for any registered and qualified voter or primary election inspector present to challenge the right of any one offering to vote, on the ground that he is not a legal voter in that precinct. When the right of any enrolled voter to a ballot is challenged he shall be required to take and subscribe an oath that he is a registered and qualified voter. Such oath shall be in the following form:

I hereby solemnly swear (or affirm) that I am a resident and registered and qualified elector, and possess the qualifications of a legal voter, in the township of ..... or in the .....
precinct of the ..... ward of the city of .....

If the challenged voter takes and subscribes to the above oath he shall then receive the ballot for which he has asked and be entitled to vote it, the same as if his vote had not been challenged; but, unless a challenged voter takes and subscribes to the above oath, he shall not be permitted to vote at such primary election. If any person who takes the foregoing oath, swears falsely, he shall, upon conviction thereof, be subject to all the pains and penalties of perjury. The provisions of § 3522 are expressly made applicable hereto. A record shall be kept of any primary ballot cast by any voter whose right to vote has been challenged, in a similar manner to that provided in the general election law. Id., Sec. 34. § 3543.

637. Manner of Voting.—Each voter, after having received his ballot, shall enter a booth and while there, concealed from view, shall vote such ballot by making a cross in the square at the left of the names of such candidates as he may desire to vote for, but in no case for more candidates for any office than is indicated under the title of such office. He may, however, vote for any person whose name is not printed on the ballot by inserting such name in such manner as shall make it a substitute for any name which is printed thereon, or where no candidate's name appears upon the ballot: Provided, That such name substituted is not printed on any other party ballot: Provided, further, That no person who is voted for on any party ballot for any State, district, county or city office, whose name is not printed on such ballot, and who has not filed a nomination petition for the office voted for, shall be deemed nominated as the candidate of such party for such office, nor receive a certificate of nomination unless he shall receive a total vote equal to five per centum of the total number of ballots cast by such party at such primary in the State, district, county or city, as the case may be. The voter shall then fold the ballot so that the perforated corner bearing the number shall be on the outside, and shall present it to the proper member of the board of inspectors, who shall tear off the corner bearing the number, and shall deposit the ballot in the ballot box. When a duly registered and qualified

voter shall ask for a ballot as before provided, the inspector shall enter his name upon the list, together with the name of the party the ballot of which is requested, and the number of the ballot given to the voter. The inspector receiving the ballot after the same has been voted shall, before depositing it in the box, ascertain by comparison with such list whether the ballot given to him is the same ballot furnished to the voter, and if it is not the same ballot, he shall reject it and the voter shall not be allowed to vote at such primary election. If any voter shall, after marking his ballot, so expose it to any person as to reveal the name of any candidate voted for thereon, the ballot shall be rejected by the board of election inspectors and the voter shall forfeit the right to vote at the primary election. A note of such occurrence shall be made upon the poll list opposite the name of the voter. Challengers who have been duly appointed shall be allowed to be present with like powers to challenge voters as are provided by law in the case of general elections. Id., Sec. 35. As Am. by Act 313 of 1915. § 3544.

Ballots should not be rejected on recount because of the failure of the inspectors to place opposite the names of the voters on the poll list the numbers of their ballots, unless the irregularity was fraudulent.—Abbott v. Montcalm Co. Canvassers, 172 / 416.

638. **Counting of Ballots; Certifying of Delegates Elected.**—After the closing of the polls on the day of holding any primary election, the ballots shall be counted as provided by law for the counting of the ballots of any regular election. In counting such ballots only those candidates for nomination to office who have a cross made in the square at the left of their names shall be deemed to have been voted for, and any ballot upon which the voter fails to indicate his party choice by making a cross in the circle at the head of the party column shall [be counted:] Provided the voter does not vote for any candidate in more than one party column, but if the voter votes in more than one party column the ballot shall be void and shall not be counted and any ballot upon which more candidates for any office have been voted for than may, by law, be elected to such office, or any ballot upon which any candidate is voted for outside the party column designated by the voter as his party ticket by the placing of a cross in the circle at the head of such ticket shall be rejected as to all names appearing for that office. The required number of electors who received the highest number of votes for delegates to the county convention of any political party shall be declared by the board of primary election inspectors to be elected. Said board shall certify to the county clerk the names of the electors so elected as delegates, naming the political party upon whose ballots such electors were elected. Said board shall also certify to each delegate so elected his election as such delegate. The county clerk shall certify to the chairman of the county committee of each political party of the county the delegates elected by each political party as delgates to the county convention. Id., Sec. 36. § 3545.

639. **Declaration and Certification of Results.**—After the votes at any primary election in any election precinct shall have been counted, the officials counting the same shall publicly declare the result, and forthwith make and certify written detailed statements, such as are required by law for general elections, except as hereinafter provided, showing the whole number of votes cast in such election precinct for each candidate voted for on each party ballot, and shall certify, subscribe and seal in a

separate envelope such statements and one of the tally sheets, and write thereon the name and number of the election precinct, if any, and deliver such statements and tally sheets to such persons and at such times as are required by law for general elections. As soon as they have completed the counting of the votes of their respective precincts they shall return all the ballots voted to the ballot boxes, and all books, unused ballots, supplies, lists and subscribed oaths shall be safeguarded and returned, as near as may be, in the manner provided for by law governing general elections. Id., Sec. 37. § 3546.

The provisions of the amendment of 1911, requiring 15 per cent of the party votes at the preceding election to entitle a candidate to have his name printed on the ballot, did not destroy the right of franchise, since the electors might write in names of candidates not appearing on the election ballot.—Brown v. Kent Co. Elec. Com'rs, 174 / 477.

640. Canvass of Returns.—The returns of said primary election shall be canvassed and the results declared in the same manner and within the same time after the primary election and by the same officers as is provided by the general law for canvassing the returns and declaring the result in city, county, district and state elections, except that in the case of nominations for U. S. senator, governor, or lieutenant governor, or officers from districts comprising more than one county, the county clerks of each county affected shall transmit to the secretary of state, within ten days after the primary election, certified copies of the number of votes received by each of the candidates for the nomination of any of the said offices. Id., Sec. 38. § 3547.

641. Person Receiving Greatest Number of Votes Declared Nominee.—The candidate of each political party for nomination for any office who receives the greatest number of votes cast for candidates for any such office as set forth in the returns or as determined by the board of canvassers on the recount by it of said ballots, shall be declared the nominee of that political party for said office at the next ensuing November election or at the next city election, or at the next election for United States senator, as the case may be, and the board of canvassers shall forthwith certify such nominations to the respective boards of election commissioners affected thereby. Id., Sec. 39. § 3548.

642. Proceedings on Recount.—Any candidate voted for at any primary election provided for in this act, who conceives himself aggrieved on account of fraud or error by the board of primary election inspectors, or in the count of the votes cast, or the returns made by said board, may, on or before the close of the day or days upon which the board of city or county canvassers meet, present to and file with the chairman or secretary of the particular board of the county or city in which a recount is asked, a written or printed petition, which shall be sworn to, and shall set forth as near as may be the nature of the errors or fraud complained of, and the particular township, ward or precinct in which the alleged irregularities occurred and ask for a recount of the votes cast therein. Such petitioner shall at the same time deposit with the chairman or secretary of said board the sum of ten dollars for each and every township or ward, but the whole amount shall not exceed one hundred dollars in any one county, the vote of which he requests to have recounted by said board. When said petition is filed and the amount herein prescribed is deposited, and after giving at least twenty-four hours' written notice thereof to the opposing candidate by handing to such candidate a copy

of the petition, or if such candidate cannot be found, by leaving such copy at his place of residence, with some person of suitable age, if such person can be found, and if not by posting it in some conspicuous place upon his last known place of residence. It shall be the duty of said board of canvassers to investigate the facts set forth in said petition and to cause the ballot boxes used in such election in such township or ward to be brought before it. The said board shall thereupon, in some public place where the interested candidates and their counsel may be present, if they so desire, proceed forthwith to open the ballot boxes from such townships or wards and to make a recount thereof as to such candidates, and make a correct and complete return in writing showing the full number of votes cast and the names of the candidates and the number of votes given to each. When the recount of each box is completed the said board shall at once return the ballots thereto, carefully lock and seal same in the manner provided by law for the locking and sealing of ballot boxes, and deliver the ballot boxes to the officer having the care and custody thereof. The returns made by the said board of canvassers upon such recount shall be deemed to be correct, anything in the previous return from such township, ward or precinct to the contrary notwithstanding. In all cases where, by reason of such recount or recounts, the petitioner succeeds in establishing frauds or mistakes sufficient that the total changes made thereby in the territory from which he is to be nominated shall result in his nomination, the money deposited by him with each of such boards shall be refunded; otherwise it shall be turned into the treasury of the county or city, as the case may be. Id., Sec. 40. § 3549.

As to proceedings in case of a recount in a precinct where voting machines are used, see Line v. Election Canvassers, 154 / 330. This provision as to a recount is not confined to districts composed of only one county; a recount may be had in any county in a congressional district.—Beakes v. Board of State Canvassers, 172 / 408.

643. Determination by Lot in Case of Tie.—If two or more candidates of the same political party be tied for the same office, the tie shall be determined by lot to be cast then and there, as the canvassing board may direct. Id., Sec. 40. § 3549.

644. Names Printed upon Official Election Ballot; Withdrawals, Etc.—The several boards of election commissioners shall cause to be printed upon the official election ballots to be used at the November or April election, or at the city election, as the case may be, the names of the candidates for office selected under the provisions of this act: Provided, That when any candidate shall die or shall withdraw as such candidate before the printing of the ballots, after having been nominated as herein provided, the proper board of election commissioners shall cause to be printed or placed upon such ballot in place of the name of such candidate or to fill such vacancy, the name of the candidate which shall be selected by the proper party committee as shown by the certificate of its chairman and secretary, in the manner provided for in the general election law. * * * When such death or withdrawal shall occur subsequent to the printing of the official ballots, it shall be the duty of said board of election commissioners, if time permits, to forward the various election inspectors, slips containing the name of the candidate entitled to fill the vacancy caused by such death, or withdrawal slips shall be pasted in the proper place upon the official ballot by the board of election inspectors. If in any

case a person is nominated for any office by more than one political party, it shall be his duty to elect, within five days after the official canvass of the returns of said primary election, upon which ticket he wishes his name to appear, and unless such election is made such candidate's name shall not be printed on any ballot: Provided, That in case of the death or withdrawal of any candidate as hereinbefore mentioned, or in case a candidate is nominated for any office by more than one political party, and such vacancy shall not be filled by the proper committee within five days from the time of its occurrence, the board of election commissioners shall print on said official ballot, in place of the candidate who has died, withdrawn or elected to have his name appear upon another party ticket, the name of the person who received the next highest vote at the primary for that office on such party ticket: Provided, further, That it shall be unlawful for any board of election commissioners to print on any official election ballot prepared for the use of voters at any election the name of any candidate required by this act to be nominated by primary election, unless such candidate was selected under authority of this act, and this prohibition shall operate against any candidate selected in any mass convention or by any so-called independent voters at any caucus or convention. Id., Sec. 41. § 3550.

The text of this section, under the amendment of 1911, provided that votes cast for candidates upon the ballots of another political party than the one in which he was enrolled, and it was accordingly held that votes cast for an enrolled republican, as a candidate on the national progressive ticket, could not be counted.—Cook v. Board of Election Com'rs of Cheboygan Co., 172 / 437. But those provisions applied only to the primary ballot, and not to a candidate selected by the party committee as a substitute for a candidate that withdrew; he was entitled to a place on the ticket.—DeFoe v. Election Com'rs of Bay Co., 174 / 472. But all provisions requiring party enrollment were dropped by the amendments of 1913 to the several sections of this act. Some evidence or showing of a candidate's right to appear on the official ballot should be in the hands of the board of election commissioners to warrant the board in causing the name of the candidate to be placed thereon.—Brown v. Kent Co. Election Com'rs, 174 / 477.

645. County Conventions.—The county conventions of all political parties for the election of delegates to a state convention for the nomination of state officers shall be held within fifteen days after the March and August primaries. All such county conventions of any one political party shall be held on the same day throughout the State, which day shall be designated by the state central committee of such political party in its call for the state convention to nominate candidates for state offices. The time and place of meeting of such county convention shall be designated in the call issued therefor by the respective county committees of such political party. The number of delegates to which such political party in such county is entitled shall be chosen at such county convention. Id., Sec. 42. § 3551.

646. State Conventions.—The state convention of all political parties for the nomination of candidates for state offices and the selection of members of the state central committee shall be held within forty days after the August primary and within fifteen days after the March primary, but not less than ten days after the day appointed for the meeting of the board of state canvassers for the purpose of canvassing the primary election returns mentioned in this act. The particular day and the time and place of meeting shall be designated by the state central committees of the various political parties in the calls for said state conventions, which calls shall be issued at least thirty days prior to the August and March primaries. Id., Sec. 43. § 3552.

647. Misdemeanors.—Every person who, directly or indirectly, by himself or by any other person in his behalf, gives, lends, or agrees to give or lend, or offers, or promises any money or valuable consideration, or promises or endeavors to procure any money or valuable consideration or office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any person in order to induce or have such person induce any voter to vote for or refrain from voting for, or support or oppose any candidate, or on account of such voter having voted or refrained from voting at any primary election in this State; every person who by any means receives, agrees or contracts for any money, gift, fee, loan or valuable consideration, office, place, appointment or employment for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting in a particular manner at any such primary election; or for inducing, or undertaking to induce any other person to vote in a particular manner, or to do or perform any of the acts or things forbidden by this act, or on account of doing or agreeing to do, or having done any campaign work, electioneering, soliciting votes for such candidates on primary day or prior thereto, or who after any primary election in this State, directly or indirectly, by himself or by any other person in his behalf, gives or receives any money or valuable consideration or place, position or employment on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any such primary election; or having induced or undertaken to induce any other person to vote in a particular manner or for any particular candidate at any such primary election, or on account of any person having done or been a party to doing anything forbidden by this act, it being the intent of this clause to prohibit the prevailing practice of candidates hiring with money and promises of positions, etc., workers on primary day and prior thereto; also every person who in behalf of any firm, partnership, association or corporation, gives, lends or receives, or agrees to give, lend or receive, or offers or promises any money or valuable consideration, place, position or employment, or promises or endeavors to procure any money or valuable consideration, in order to aid or promote the nomination of any particular candidate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment for a period of not more than six months, or by both such fine and imprisonment in the discretion of the court. Id., Sec. 45. § 3554.

648. Misdemeanors.—Any person who shall, while the polls are open, at any polling place on any primary day, solicit votes in the said polling place, or within one hundred feet thereof; any person who shall offer or give to any other person any intoxicating liquors, or drink any intoxicating liquors within any such polling place; any person who shall violate any of the requirements or provisions of this act for which a penalty is not herein otherwise provided; any person who shall refuse or neglect to perform any duty enjoined upon him thereby; and any member of any primary election board who shall neglect or refuse to comply with any provision of this act upon demand of any elector or police or peace officer so to do, and any person who shall vote or attempt to vote more than once, or in more than one election district at the same primary election, and any person who shall vote at any primary election or attempt

to so vote when he is not legally entitled to so vote shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to the punishment prescribed in the preceding section, and it is hereby made the duty of any police or other peace officer present and having knowledge of any violation of any of the provisions of this section to forthwith institute criminal proceedings for the punishment of such offender. Id., Sec. 46. § 3555.

649. **Posting of Advertisements.**—It shall be unlawful for any candidate for nomination under the provisions of this act, after the date on which he has announced himself a candidate for any office included within the provisions of this act, or after he has filed his petition to have his name placed upon the primary ballot, and before the close of the polls of such primary on primary day, directly or indirectly, by himself or by any other person, to post, pay for posting, or cause to be posted upon or in any building, or upon any tree, post, fence, bill board telegraph or telephone pole, vehicle or other object within the territory where he is a candidate, any campaign card, banner, hand bill, poster, lithograph, half-tone engraving, photograph or other likeness of himself, or other advertising matter used, or intended for the purpose of advertising or advancing his candidacy for office. Id., Sec. 47. § 3556.

650. **Printing of Advertisements.**—It shall be unlawful for any person, after he has declared himself a candidate for any office included in the provisions of this act or filed his primary petition therefor as herein provided, and before the close of the polls on primary day, for the purpose of promoting his candidacy therefore, or for use in his campaign for such office, directly or indirectly, to print or cause to be printed, pay or cause to be paid for printing, circulate or distribute, or cause to be circulated or distributed, any campaign cards, hand bill, banner, poster or other advertising matter larger than two and one-fourth inches in width by four inches in length, except postal cards and letters, or which contains any lithograph, half-tone engraving, photograph or other likeness of himself, which likeness is larger than one and one-half inches in width by two inches in height, excepting advertisements in newspapers as hereinafter provided, or to publish or cause to be published, pay for publishing, or cause to be paid for publishing, any printed matter whatsoever, or any lithograph, half-tone engraving or other likeness of himself, or any other political advertisement of any kind or nature whatsoever which is intended, published or manufactured for the purpose of promoting or advancing his candidacy for such office, or influencing voters relative to his said candidacy in or upon any magazine, program, bill of fare, ticket for any ball or other entertainment, or upon or in any other substance or publication whatsoever, except in a daily, weekly or monthly newspaper which has been regularly and bona fide published and circulated for at least three months before such advertisement is to be inserted therein. It shall be unlawful for any other person to do or perform for or on behalf of any such candidate or to help or injure the candidacy of any candidate, any of the acts or things which it is by this act made unlawful for such candidate to do. Id., Sec. 48. § 3557.

651. **Soliciting Funds.**—It shall be unlawful for any person to solicit from any candidate for nomination for any office included in the provisions hereof, any money or other property. The provisions of this sec-

tion shall not apply to requests for contributions of money by or to an authorized representative of the political party committee of the organization to which such candidate belongs, and shall not apply to any regular business transactions between any such candidate and any other person, which is not intended for or connected with the securing of votes or the influencing of voters in connection with such nomination. Id., Sec. 49. § 3558.

652. Newspaper Advertising.—It shall be unlawful for any candidate for nomination for any office included in the provisions of this act, or any other person on his behalf, for the purpose of helping his candidacy for such office, directly or indirectly to pay for publishing or cause to be inserted or published in any newspaper any lithograph, half-tone engraving or other likeness of such candidate larger than one and one-half inches in width by two inches in height or any advertisement in which more than ten percentum of the printed matter is printed in a larger type than the regular type used in printing the editorials of such newspaper, excepting therefrom the name of such candidate and the title of the office for which he is a candidate, and no such candidate shall pay for, or, directly or indirectly, cause any advertisement or any likeness of himself to be inserted or published in any such newspaper which charges or demands from him a higher rate therefor than the highest regular rate which such newspaper charges other persons or firms for non-political advertisements for the same space, position and number of insertions, and all candidates shall exercise reasonable diligence to ascertain what such regular advertising rate is before inserting any such advertisement, and if he shall be misinformed as to such rate he shall not be held responsible under the provisions of this act for such illegal publication. It shall be unlawful for any person, firm or corporation or employe thereof, soliciting or receiving any such advertisements or printed matter for any such newspaper from any such candidate, to misinform any such candidate as to such advertising raees. Id., Sec. 50. § 3559.

653. Treating by Candidates.—It shall be unlawful for any candidate for nomination under the provisions of this act, after he has announced himself as a candidate for any office included in this act, or after he has filed his petition to have his name placed upon the primary ballot as herein provided, and before the close of the polls on any primary day, in any store, saloon, hotel, hall or other public building, public street or place within the territory from which he seeks a nomination, directly or indirectly to buy or give to, or cause to be bought for, or given to, any elector residing therein any spirituous, malt, brewed, fermented or other intoxicating liquor or beverage. It shall be unlawful for any person for or on behalf of any such candidate, or to help or injure the candidacy of any candidate, in any of the places included in this section, to buy for, give to, or cause to be bought for or given to any elector, any of the liquors or beverages included in this section for the purpose of influencing the vote or support of such elector for or against any such candidate, or when it is announced or made known in any way to any such elector before or after such beverage is served that the same are given or served for the purpose of assisting or injuring the candidacy of any candidate, or influencing the action of such elector in relation thereto, it being the intent of this section to prohibit the prevailing cus-

tom of treating by candidates for nomination for public office or by any other person on behalf of such candidates. Id., Sec. 51. § 3560.

654. Omission or Commission of Certain Acts.—Any person who shall do or perform any act or thing which is by this act made unlawful for him to do, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment not exceeding six months, or both, in the discretion of the court. When by this act any act or duty is required to be done or performed by or under the direction, supervision or authority of any officer, and such act or duty shall not be done or performed, then the officer who shall neglect to perform such act or duty, or who shall be responsible for such neglect, shall be guilty of a misdemeanor and shall be punished as provided in section fifty-five hereof. Id., Secs. 52, 53. § § 3561-62.

Section 55 above referred to is Section 656 of this Guide. The reference is manifestly an error and was doubtless intended to be "Section forty-five," which is Section 647 of this Guide.

655. Commencement of Prosecutions and Liability of Witnesses.—No prosecution for any offense mentioned in this act shall be maintained unless it shall be commenced within six months after the date of the primary election in connection with which the offense is alleged to have been committed. Neither the complaining witness, nor any other person who may be called to testify in behalf of the people in any such proceeding, shall be liable to criminal prosecution under this act for any offense in respect to which he shall be examined or to which his testimony shall relate, except to prosecution for perjury committed in such testimony. Id., Sec. 54. § 3563.

656. Posters to be Placed in Polling Places.—It shall be the duty of the county clerk of each county to cause to be printed large cards or posters containing verbatim the whole of sections thirty-four and forty-six of this act, and shall furnish two of the same to the board of primary election inspectors of each election precinct in his county at the same time that the official ballots for use at primary elections are delivered, and the board of primary election inspectors shall cause the said posters to be posted in conspicuous places in the polling places so that the same can be plainly seen and read by all persons at any primary election. Id., Sec. 55. § 3564.

657. Duty of Township Clerks.—It shall be the duty of the clerk of any city, township or village in which this act is operative to deliver to the board of primary election inspectors of each election precinct within his jurisdiction, before the time for opening of the polls on primary election day, the register of electors and the blanks for poll lists and returns and any other supplies necessary to carry out the provisions of this act not herein otherwise provided for. Id., Sec. 55. § 3564.

658. Presidential Preference and National Committeeman Primaries.—A presidential primary election at which the qualified voters of the several political parties shall have opportunity on separate ballots provided for that purpose to express their preference as to the nominees of their respective parties for the office of president of the United States, and a primary nominating election at which said electors shall have opportunity in like manner to express their preference for the members

of the national committee of their respective parties, are required by law to be held in every voting precinct on the first Monday in April of each presidential year. See § § 3567-74 and § § 3575-82, C. L. of 1915.

CHAPTER II.

ABSENT VOTERS AT PRIMARY ELECTIONS.

[Act 270, Public Acts of 1915.]

[The absent voter provisions of the Michigan Election Law of 1917 are thought to be inapplicable to primary elections, inasmuch as the title of that act contains no reference to primary elections. Act 270 of 1915 is therefore retained in this Guide and should be observed in connection with the operation of primary elections.]

659. Absent Voter Defined.—For the purposes of this act the term "absent voter" shall be taken to mean any elector in the actual military service of the United States or of this State, or in the army or navy thereof, in time of war, insurrection or rebellion, members of the legislature while in attendance at any session of the legislature, students while in attendance at any institution of learning, and commercial travelers who are absent from their legal residence upon the day of any general, special or primray election, and who are qualified electors of this State, as contemplated by section one of article three of the constitution. The term "commercial traveler" shall be taken to mean a person engaged in soliciting the sale of goods, by the exhibition of samples, or by catalogue or other device, for the purpose of effecting such sales and taking orders for goods to be subsequently shipped by his employer: the term "district" as used in this act shall be deemed to mean that section or territory over which the city, village or township clerk has jurisdiction. Act 270 of 1915, Sec. 1. § 3794.

660. Absent Voter May Vote at Elections and Primaries.—Any absent voter, as defined by section one of this act, who will be entitled to vote on election day, who is absent from the county of which he is an elector, on the day of holding any general, special or primary election, held for the purpose of nominating or electing national, state, legislative, county, township, city, village or other municipal officers, or for the adoption or rejection of constitutional amendments or initiated or referred measures, or other propositions submitted, may vote at any such election as hereinafter provided. Id., Sec. 2. § 3795.

661. Applications to Township Clerk.—At any time within thirty days next preceding such election, any of the aforesaid voters expecting to be absent on the day of such election from the county in which his voting precinct is situated, may make application to the township, city or village clerk of his district either in person or by mail, upon a blank to be furnished by the county clerk to the various township, city or village clerks for that purpose, for the official ballot or ballots to be voted at such election. Such application blank shall upon request therefor, be sent by such township, city or village clerk to said absent voter by mail or shall be delivered to said voter upon application made personally at the office of such township, city or village clerk. Such application blank shall be in substantially the following form, and shall be signed and sworn to by the applicant before some officer authorized to administer oaths:

Application for absent voter's ballot for the election to be held on ....., 19....

I, ..., a duly qualified elector of the ..... precinct of the township of ....., or village of....., or of the .....precinct of the.....ward of the city of ....., in the county of ....., and State of Michigan, and a ..... expecting to be
(Give occupation)
absent from the said county on the day for holding such election, hereby make application for an official ballot, or ballots, to be voted by me at such election. I request an official ballot of ..... party.

(To be filled in for primary elections only.)

Date .....
Signature of applicant.....
Home address of applicant.....
Send absent voter ballot to
Postoffice .....
Street address, if any.....

Id., Sec. 3. § 3796.

662. Clerk to Enter Applications and Forward Ballots.—Upon receipt of such application blank, it shall be the duty of the township, village or city clerk to file the same in his office and to enter the name of said voter, together with the address to which such ballot or ballots are to be sent, upon a list to be kept by such clerk for such purpose, together with the date of receiving the same, the date of mailing the ballot or ballots to such voter, the date of receiving the ballot from such voter, and such other information as may seem necessary or advisable. The clerk shall keep a separate list or record for each voting precinct in his district. As soon as the ballots are printed the said clerk shall mail one each of the ballots to be voted as hereinafter prescribed to said absent voter, provided he be properly registered or enrolled, or will be a qualified elector at the coming election, at the address named, and the said voter shall return the same to said clerk so that it can be delivered by him into the hands of the board of election inspectors of such elector's precinct before the closing of the polls on election day. Id., Sec. 4. § 3797.

663. Delivery of Ballots to Township Clerk.—The ballots required for any general, special or primary election shall be delivered to the county clerk at the earliest possible time after the approval of the proof thereof, and at least twelve days before election. The county clerk shall immediately deliver to each of the township, village or city clerks, and in two separate packages, the number of official ballots to which such township, village or city is entitled by law. Twenty-five per cent of the total number of ballots to which the various townships, villages or cities are entitled, together with such additional number as the county clerk may deem to be necessary upon a proper showing by the respective township, village or city clerks beginning with ballot number one, and including the consecutive numbers thereafter, shall be enclosed in one package, as many as are necessary thereof to be used for absent voters as herein provided. The remainder of such ballots shall be enclosed in a second package, sealed as now required by law, and shall be kept intact by the various township, village or city clerks in some safe and secure place with a seal thereon unbroken until election day, as now required: Pro-

vided, That any township, village or city, or other elections where the ballots are not printed by the order of or delivered to the county clerk, such ballots shall be ordered printed as now provided by law, except as to time, and placed in the hands of such township, village or city clerks at least twelve days before election, and the same per centum of such ballots shall be retained separately by such clerk as is above provided for the use of absent voters when delivered by the county clerk. Id., Sec. 5. § 3798.

664. Printed Instructions to be Sent to Absent Voters.—The city, township or village clerk, as the case may be, shall enclose with each ballot sent to absent voters separate printed instructions to be furnished by the county clerk containing the following: Upon receipt of this ballot you will proceed to mark the same in accordance with the instructions enclosed, then fold the same so that the corner bearing the initials of the township, village or city clerk may be seen without unfolding the ballot. Place the ballot in the envelope enclosed herewith and securely seal the same. Make out the affidavit printed upon the back and swear to the same before a notary public, or other person authorized to administer oaths, place the necessary postage upon the envelope and deposit the same in the postoffice or in some government receptacle provided for the deposit of mail matter. This ballot to be valid, must be mailed so that it will reach the township, village or city clerk in which your precinct is located, in time to be deposited by him with the proper election board before the closing of the polls on election day. Id., Sec. 6. § 3799.

665. Manner of Forwarding Ballots.—Upon receipt of the ballots herein provided for it shall be the duty of the said township, village or city clerk to initial a sufficient number of the same, in the same manner as is provided by law for the initiating of ballots by the inspectors of election, and to forward one of such ballots, or if there be more than one ballot to be voted, then one of each of such ballots, to each applicant for the same from said clerk's district as shown by the list provided for in section four of this act, using due care that the same be mailed, postage prepaid, at least ten days before the opening of the polls on election day. He shall enclose with such ballot an envelope which shall bear upon the front thereof the name, official title and postoffice address of such township, village or city clerk, together with a request for return if not called for within three days, and upon the other side a printed affidavit in substantially the following form:

State of.....
County of..... } ss.

I, ..., do hereby solemnly swear that I am a resident of the ..... precinct of the { township / village } of ..... the ..... precinct of the ..... ward of the city of ....., State of Michigan, and entitled to vote in such precinct; that the enclosed ballot was marked by me personally and enclosed in this envelope and sealed by me without being exhibited to any other person.

.....
(Signature of absent voter)

Subscribed and sworn to before me, a ..... in and for ..... county, State of ....., this ..... day of ....., 19....

.....
(Signature of official)

Official title .....
Commission expires .....

Id., Sec. 7. § 3800.

666. **Marking and Return of Ballots.**—Upon receipt of such ballot or ballots, the voter to whom the same is addressed shall mark the same in accordance with the printed instructions; shall fold and enclose the same in the envelope provided therefor and after sealing said envelope he shall fill out the affidavit printed on the back thereof and sign and swear to the same before a notary public, or other person authorized to administer oaths, and, after placing thereon the necessary postage, he shall deposit the same in the postoffice or in some government receptacle provided for the deposit of mail matter. The ballot, in order to be valid, must be received by the township, village or city clerk in time for him to deposit the same with the election board in such elector's voting precinct before the closing of the polls on election day. Id., Sec. 8. § 3801.

667. **Delivery of Ballots to Election Board.**—Upon receipt of the envelope containing the marked ballots of any absent voter, it shall be the duty of the said clerk to safely keep the same in his office until election day and shall during the hours that the polls are open on election day deliver the same together with the signed application to the election board in such absent voter's precinct. Id., Sec. 9. § 3802.

668. **Board to Verify Legality of Vote.**—It shall be the duty of the said election board to verify the legality of such vote by a comparison of the signature to the affidavit with that upon the application of such elector, by an examination of the poll lists to see that such voter had not voted in person and is a registered or enrolled voter; by an examination of the affidavit of such voter to see that the same is properly filled out and attested. Id., Sec. 10. § 3803.

669. **Manner of Depositing Ballot.**—When the said board shall have satisfied themselves that such vote is legal, that the affidavit is sufficient, that the signatures correspond and that such voter has not voted in person in the precinct wherein he resides, they shall proceed to open the absent voter's envelope and take out the ballot or ballots therein contained and, without unfolding the same or permitting the same to be opened or examined, they, or one of them, shall detach the perforated numbered corner and having satisfied themselves that the initials thereon are the initials of the township, village or city clerk, as the case may be, they shall deposit the same in the regular box or boxes provided for that purpose and shall deposit the ballot in the regular ballot box to be counted with the other ballots. They shall also enter upon the proper poll list the fact of such voter having voted at such election by means of an absent voter ballot. Id., Sec. 11. § 3804.

670. **When Ballot to be Rejected.**—If upon the examination of the envelope containing an absent voter's ballot or ballots, the affidavit thereon is found to be insufficient, or that the signatures do not correspond, or if, upon examination of the poll list it is discovered that

such absent voter has voted in person in the precinct wherein he resides, or if in any way it is determined by such board that such ballot is illegal, then such vote shall not be allowed, but, without opening the absent voter envelope, the board, or some member thereof, shall mark across the face of such envelope "rejected as defective" (or illegal as the case may be), and said envelope and the ballot or ballots contained therein shall be retained and preserved in the manner now provided by law for the retention and preservation of official ballots voted at such election. Id., Sec. 12. § 3805.

671. **Record and Unused Ballots to be Delivered to Board.**—At the opening of the polls on election day each township, village or city clerk shall deliver his record or records to the proper election board, together with any unused ballots in his possession; such unused ballots shall be the first used by the election board. Id., Sec. 13. § 3806.

672. **Absent Voter May Return and Vote.**—The provisions of this act shall not be construed so as to prohibit any absent voter, returning to his place of residence, from voting in person within his precinct at any general, special or primary election, notwithstanding that he may have made application for an absent voter's ballot and the same may have been mailed by the said clerk: Provided, That such voter has not availed himself of the privileges of an absent voter, as provided by this act, and voted the ballot mailed him by the said clerk, and provided he returns such ballot, if received, to the board by whom it shall be marked "cancelled" and placed in the regular ballot box with other ballots. Any voter so voting in person and by means of an absent voter ballot, or who shall attempt so to vote, shall be deemed guilty of a violation of this act and punished as hereafter provided. Id., Sec. 14. § 3807.

673. **Time of Holding Caucuses and Primaries.**—All caucuses, conventions or primary elections held for the purpose of nominating candidates for any election shall be held at least twenty days before such election and in sufficient time so that the ballots may be printed and in the hands of the various county, township, village or city clerks, as the case may be, the number of days before election as herein provided, notwithstanding any provisions of any law or statutes in contravention thereof, and all acts or parts of acts contravening any of the provisions of this act are hereby repealed.—Id., Sec. 15. § 3808.

674. **Penalty for Violation of Act.**—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished, upon conviction thereof, by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or both such fine and imprisonment, in the discretion of the court. Id., Sec. 16. § 3809.

675. **Official Failure, Neglect, Etc., Nonfeasance in Office.**—Failure, neglect or refusal on the part of any official to perform the duties required of him by this act, shall constitute nonfeasance in office and as such shall subject such official to removal from office as is provided by law. Id., Sec. 17. § 3810.

CHAPTER III.

VOTING MACHINES AT PRIMARIES.

676. Authority to Use Voting Machines.—At all State, county, city and township primaries, ballots or votes may be cast, registered, recorded or counted by means of voting machines as hereinafter provided. Act 225 of 1909, Sec. 1. § 3982.

For the provisions of law relating to the use of voting machines at general elections, see Sections 581 to 609 of this Guide.

677. Any Authorized Machine May be Used.—Any voting machine which is by law authorized to be used at a general election may, by the order of the board of supervisors of any county, the common council of any city or the township board of any township, be used therein at primary elections in like manner and to the same extent that such machines may be used at general elections, and in case there are more candidates than can have their names placed on any such machines so to be used, or in case such machine is not so constructed that no voter can vote for candidates of more than one political party, then it shall be the duty of the proper election commission to designate what names shall be voted for on machines, and to print the remaining names upon proper ballots in such manner as far as may be that the political party or parties polling the largest vote in such county for secretary of state at the last preceding election shall be placed upon the machine, and the candidates of smaller parties shall be placed upon ballots, but all the candidates of any party shall either be upon the machine or upon a ballot.—Id., Sec. 2. § 3983.

678. Ballots or Slips.—Ballots or slips used with or upon any voting machine shall be printed on card board or paper of a size suitable to the machine used, but shall be of the colors required for each party or organization at primary elections. It is further provided that such ballot labels or slips shall be furnished by the board or official now required to furnish such supplies. The names of all candidates shall be alternated on the ballot of each party casting at least five per centum of the vote cast in the county or political subdivision at the preceding November election and shall be printed as follows:

First, The form shall be set up with the names of such candidates arranged alphabetically, in order according to surnames;

Second, In printing each set of tickets or ballot labels for the several election precincts, the position of the names shall be so changed that each candidate's name for any particular office shall as far as possible appear upon the ballot labels at the head of his office subdivision an equal number of times;

Third, In making the change of position the printer shall take the line of type at the head of each office division and place it at the bottom of the division and move up the column, so that the name that before was second shall be first after the change;

Fourth, Ballots shall also be furnished as near as may be in the form as provided by the general primary law of the State, for voting for delegates to county conventions, and shall be voted in a separate ballot box provided therefor, as now required. Id., Sec. 3. § 3984.

679. **Party Levers to be Locked.**—Whenever a voting machine is used in a primary election the party levers or bars, if any, shall be locked against voting so as to prevent straight ticket voting, and the machine shall be properly arranged so that the voter may vote for as many candidates for each office as there are candidates to be nominated to that office and no more. Id., Sec. 4. § 3985.

680. **More Than One Machine May be Used.**—More than one voting machine may be used in a precinct. Id., Sec. 5. § 3986.

681. **What Other Acts Apply Where Voting Machines are Used at Primaries.**—All acts or parts of acts relating to the use of voting machines and all acts relating to the selection of candidates by direct vote shall apply as far as practicable wherever voting machines are used in primaries, except insofar as the provisions thereof may be inconsistent herewith.—Id., Sec. 6. § 3987.

PART VII.

THE TOWNSHIP BOARD.

CHAPTER I.—General Powers and Duties.
CHAPTER II.—Disposition of Lands and Property on Division.
CHAPTER III.—Adjustment of Rights and Liabilities.
CHAPTER IV.—Duties of Township Board Relating to Drains.
CHAPTER V.—Duties of Township Board Relating to Highway Bonds.
CHAPTER VI.—Purchase of Toll or Plank Road Company.

CHAPTER I.

MEMBERSHIP AND GENERAL POWERS AND DUTIES.

682. Who to Constitute Township Board, Etc.—The supervisor, the two justices of the peace whose term of office will soonest expire, and township clerk, shall constitute the township board, any three of whom shall constitute a quorum for the transaction of business. § 2122.

MEMBERSHIP: See Stockwell v. White Lake, 22 / 351; Price v. Oakland Township Board, 182 / 216, 219.

Where the record of a meeting of the township board shows that two justices of the peace were present and acting, the presumption is that they were entitled to sit as members, and the record need not show that they were the two justices whose terms of office would soonest expire.—Mfg. Co. v. Echtinaw, 81 / 416.

Where a town clerk is incapacitated to sit as a member of the township board upon an appeal to it from the highway commissioner in laying out a public highway, the deputy clerk is not authorized to sit as a member of the board.—Dubois v. Riley Township Board, 126 / 587.

683. Proceedings When Quorum Not Present.—When, from any cause, there shall not be three of the officers constituting such board, competent or able to act, one of the remaining justices, on being notified by any member of said board, shall meet with any members of the board, and shall have the same authority as the other members of the board. § 2123.

COMPETENCY TO ACT: A member of the board is incompetent to act with the other members, upon any matter in which he is interested; and should he do so, the action of the board upon that subject would be illegal.—Stockwell v. White Lake, 22 / 341. But this principle does not apply to the performance of official acts pertaining to the public interest, in which he has no interest different from that of any other citizen.—Clement v. Everest, 29 / 19.

JUSTICES: Under this provision the board may call on any justice to act temporarily as a member.—Grondin v. Logan, 88 / 247. Upon a vacancy arising in either of the senior terms, the third justice succeeds to membership.—Laroue v. Conway, 118 / 559.

PRESIDING OFFICER: Any member of the township board may act as presiding officer, and when the supervisor is absent one of the justices called in may preside.—Price v. Oakland Twp. B., 182 / 216, 219.

684. Annual Meeting of Board to Audit Accounts, Etc.—The township board shall meet annually on the second Tuesday next preceding the annual township meeting to be held in such township, for the purpose of auditing and settling all claims against the township; and they shall state on each account the amount allowed by them; and the amounts allowed by them shall be paid by the treasurer, on the order of the board, signed by their clerk, and countersigned by the chairman of the board. § 2124.

LEGAL MEETINGS: Meetings of a township board, unless duly called and notified, are not legal if not attended by all the members.—Beaver Creek v. Hastings, 52 / 528; Boyce v. Aud. Gen., 90 / 324.

CLAIMS: The powers of the board are special and limited; they can allow such claims only as are authorized by law. Where claims not so authorized have been allowed, payment of them should be withheld.—People v. Blackman, 14 / 336. A township board acts judicially in the allowance of claims, and is protected from liability for its decisions in all cases where it has jurisdiction to pass upon claims presented for allowance. Generally, the presentation of a demand, purporting to be a claim against the township, is sufficient to confer jurisdiction on the board to hear and determine it. If their authority to audit any claim is derived from some special law or from some particular authority, the presentation of a demand under such act or authority, gives jurisdiction to determine whether the claim comes within the act or authority, and to allow or adjust it according to their judgment. The presence of the claimant before the board is not necessary to the allowance of his account. But the claim must be in writing; it cannot be presented by parol.—Wall v. Trumbull, 16 / 228, 253. An order to show cause why a township should not pay a town order is fully met by a return showing that it was fraudulently issued without consideration and without any allowance by the proper authorities.—Noble v. Paris, 56 / 219. A township board has no power, at least in the absence of authority conferred upon it by the electors legally assembled, to bind the township to pay for money and labor expended in putting land owned by the township in condition to be rented to a county agricultural society for use in holding annual fairs.—French v. Township of South Arm, 122 / 593.

An adverse decision by the board is not conclusive upon the claimant or the courts. Van Wert v. Sch. Dis., 100 / 332, 335; Wilkinson v. Long Rapids, 74 / 63, 68.

685. **Board to Settle with Treasurer and Other Officers at Annual Meeting.**—The said board shall, at their annual meeting in each year, examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as such treasurer; and they shall also audit and settle the accounts of all other township officers who are authorized by law to receive or disburse any public moneys by virtue of their offices; they shall also have power and it is their duty to cause the provisions of the statute for the protection and preservation of township records, books, and papers to be enforced; and they shall determine the amount of the bond and the number of sureties to be required from the township clerk, as provided by law, in each year, within the thirty days next preceding the annual township election. § 2125

SETTLEMENT WITH TREASURER: In an action by a township against its treasurer for funds unaccounted for, defendant's books and the evidence of the board who examined the accounts are admissible.

It is beyond the scope of the authority of the township board, on a settlement with the treasurer, to take notes payable at a future day for an amount less than that found due, and accepting such notes by the board will not stay the township's right of action on the treasurer's bond.—Otsego Twp. v. Kirsten, 72 / 1.

686. **Township Clerk to be Clerk of Board.**—The township clerk shall be the clerk of such board, and shall keep a true record of all their proceedings in his office. § 2126.

TEMPORARY SECRETARY: The power to appoint a temporary secretary is a necessary incident to corporate meetings. In the absence of the township clerk, the justice of the peace called in to act may be appointed to fill the vacancy.—Nat. Bank v. St. Joseph, 46 / 526, 528.

687. **Accounts to be in Writing, Verified, Filed, Etc.** —No accounts shall be audited by such board, except such as are made in writing, giving the particular items of such account, and verified by oath or affirmation of the claimant or some one in his behalf. If such account includes a claim for labor or services, for which a certain rate per day is allowed by law, or demanded by the claimant, it must set forth correctly the number of days spent in such service, the nature of the services rendered, and the date thereof as near as may be. All accounts audited by such board shall be filed and preserved by the clerk, for the inspection of any of the inhabitants of the township, or of any persons liable to pay taxes therein, and be produced at the next annual township meeting and there read by him, if the same be required by the meeting. § 2127. [Form No. 22.]

ACCOUNTS: Claims shall be presented in writing and verified by oath.—Wall v. Trumbull, 16 / 252, 259. See also Harding v. Bader, 75 / 318; People v. Flock, 100 / 514.

688. When Board May Vote Money to Meet Ordinary or Emergency Expenses.—Whenever the qualified electors of any township, at the annual township meeting, shall neglect or refuse to vote such sums of money as may be necessary to defray the ordinary township expenses, or to meet any emergency expenses, the township board of any such township is hereby authorized, at any regular meeting, to vote such sum or sums as may be necessary for that purpose, not exceeding in any one year the sum of one-half of one per cent of the assessed valuation, and said township board may authorize and direct, by resolution, the supervisor and township clerk to borrow such sum as may be necessary, not exceeding one thousand dollars in any one year, for the payment of such expenses and to issue the obligations of the township therefor. § 2128. As Am. by Act 24 of 1917. [See Form No. 23.]

NEGLECT OR REFUSAL: The authority of a township board to vote money for township expenses depends upon the neglect or refusal of the qualified electors to vote the sums necessary to defray the ordinary township expenses at the annual township meeting; which neglect or refusal must be shown by the record of the board.—Harding v. Bader, 75 / 316; Aud. Gen. v. Sparrow, 116 / 574; Mills v. Richland Twp., 72 / 100, 106; Gamble v. Aud. Gen., 78 / 302, 303; Mfg. Co. v. Echtinaw, 81 / 416, 422.

ORDINARY EXPENSES: Ordinary expenses can never include less than the necessary expenses incurred in administering the government of the township in such manner as will best promote the convenience, peace, health, prosperity and happiness of the people residing therein.—Mills v. Richland Twp., 72 / 100, 107. And this includes the payment of debts.—Marathon v. Oregon, 8 / 372, 382; Mills v. Richland Twp., 72 / 100, 107. The support of the poor is an "ordinary expense" of a township, within the above section, authorizing the township board to vote a tax to defray the ordinary expenses of the township, in case of the neglect or refusal of the electors to vote the same.—Western Lumber Co. v. Township of Munising, 123 / 138. Township bonds, if legally issued, are fixed charges against the township, and the record of the meeting of the township board at which money is voted to be raised to pay such bonds, need not show the neglect or refusal of the electors to vote money for that purpose. Manufacturing Co. v. Echtinaw, 81 / 416.

REGULAR MEETING: The statute does not specify at what time, or within what time, the votes shall be taken by the board. It is necessary only that it be "at any regular meeting."—Pen. Iron Co. v. Crystal Falls, 60 / 510, 519. In order to authorize a township board to vote money at a special meeting, to be raised by taxation, the record must show that all of the four members were notified of, or were present at, such meeting.—Harding v. Bader, 75 / 316.

RECORD: The record of the board must show that the sum voted is for ordinary township expenses.—Harding v. Bader, 75 / 316, 319. By the amendment of 1917, the authorization is extended to include "emergency expenses."

689. Township Board to Publish Annual Statement.—The township boards of the several townships of this State shall make and cause to be published annually, immediately upon the settlement of the township board, an itemized statement of, first, the amount of money in the hands of the township treasurer at the beginning of the fiscal year, specifying the amount in the several funds; second, the amount and source of all money placed to the credit of the township and the fund to which the same has been accredited; third, all bills audited and allowed by them; fourth, all disbursements of money made by them, and for what purpose and from what fund the same has been paid; fifth, all outstanding unpaid claims and to what fund the same are charged; sixth, the balance of money remaining to the credit of the township, specifying the amount in the several funds. The said itemized statement shall be written or printed and distributed in numbers of not less than five, nor to exceed fifty copies and also three copies of said statement are to be posted in conspicuous places, said distribution and posting to be made at the polls of every annual township meeting, and at the commencement of the opening of the polls. § 2129.

690. Township Board to Audit Expense.—The expenses of carrying out the provisions of this act are a charge against, and shall be audited and allowed by the township board and paid out of the general fund of such township. § 2130.

NOTE: The act referred to is Act 262 of 1897, to require township boards to make and

publish annually an itemized statement of the condition of the finances of the township, in relation to the receipts and disbursements made by the township board, and is compiled in Sections 689, 690 and 691 of this Guide.

691. Penalty on Township Board.—The failure on the part of the township board to comply with the provisions of this act shall be deemed a misdemeanor, on the part of all the individual members of such township board not voting therefor, and shall be punished by a fine of not more than twenty-five dollars or by imprisonment in the county jail for a period of not more than thirty days, or by both such fine and imprisonment, in the discretion of the court, upon the complaint of any taxpayer within such township. § 2131.

NOTE: See note to preceding section.

692. Appointment of Township Officers to Fill Vacancies.—When a vacancy shall occur in any township office, except the office of justice of the peace, it shall be filled by appointment by the township board, and the person appointed shall hold the office for the remainder of the unexpired term. Act 203 of 1917, Chap. IV, Sec. 6. See also the next two sections of this Guide.

693. May Fill Vacancy in Board of Review.—The township board may temporarily fill any vacancy which shall occur in the membership of the board of review, but no member of the township board shall be eligible to fill such vacancy. § 4022.

694. Board May Appoint Justice to Fill Vacancy.—Whenever a vacancy shall occur, by reason of death, resignation or otherwise, in the office of justice of the peace, the township board shall be empowered to fill such vacancy. See Sec. 1807 of this Guide.

695. Board May Designate Depository for Township Moneys.—The township board may provide by resolution for the depositing of any or all moneys coming into the hands of the township treasurer. The bank or banks designated as depository shall give a good and sufficient bond to be approved by the township board, conditioned for the receipt, safekeeping and payment of all money which may come into its custody, in the amount designated as the penalty in the bond furnished by the township treasurer. The township board shall determine the time for which deposits shall be made and all details for carrying into effect the authority herein given, but all such proceedings in connection with the deposit of such moneys shall be conducted in such a manner as to insure full publicity, and shall be open at all times to public inspection. See § 2124, being Sec. 1360 of this Guide.

696. When Board May Require New Bond of Township Treasurer.—Whenever the sureties in the bond given by any township treasurer to the county treasurer, as required by law, shall become insolvent, or shall remove out of the county, or shall in the opinion of the county treasurer, become in any manner insufficient, the county treasurer shall give notice thereof to the supervisor of the township, and that such township treasurer is required to give a new bond to the county treasurer. § 2137. See also Sec. 1364 of this Guide.

Whenever the sureties in the bond given by any township treasurer to his township, as required by law, become insolvent, or remove out of the county, or in the opinion of the township board become in any manner

insufficient, or whenever the penal sum named in such bond shall, by said board, be deemed insufficient, the township board may require the township treasurer to give a new bond to the township, with sufficient sureties, to be approved as required by law. § 2138. [See Form No. 24.]

697. When Board May Appoint New Township Treasurer.—In case any township treasurer neglects to give either of the bonds required, or shall die, resign, or move out of the township, or become unable to discharge the duties of his office, the township board shall forthwith appoint a new treasurer, who, on giving the required bonds, shall execute the duties of the office for the remainder of the year, and until his successor is elected and qualified. The township clerk shall immediately notify the county treasurer of such appointment. § 4046. [See Form No. 25.]

In case the treasurer of any township shall refuse to serve, or shall vacate his office before completing the duties thereof, or be disabled from completing the same, by reason of sickness or any other cause, the township board shall forthwith appoint a treasurer for the remainder of the term, who shall give like security, and be subject to like duties and responsibilities, and have the same powers and compensation, as the treasurer in whose place he was appointed, and the township clerk shall immediately give notice thereof to the county treasurer; but such appointment shall not exonerate the former treasurer, or his sureties, from any liability incurred by him or them. § 2108. [See Form No. 25.]

If any township treasurer shall neglect or refuse to give any new bond required of him as herein provided, such refusal or neglect shall be deemed a refusal to serve, and thereupon the township board shall appoint a new treasurer for the remainder of the year, who shall give like security and be subject to like duties and penalties, and have the same powers and compensation as the treasurer in whose place he was appointed; and the township clerk shall immediately give notice of such appointment to the county treasurer, but such appointment shall not exonerate the former treasurer or his sureties from any liability incurred by him or them. § 2141. [See Form No. 25.]

698. Board to Determine Sufficiency of Druggist Bond Under Prohibitory Liquor Act.—Every druggist shall, after receipt of his permit as aforesaid and before he shall sell any of the liquors mentioned in this act, execute and file with the county treasurer of the county in which he is carrying on the said drug business, a bond, the sufficiently of which shall be determined by the official municipal governing body of the township, village or city in which such business is proposed to be carried on, to the people of the State of Michigan in the sum of two thousand dollars with two or more sufficient sureties who shall be freeholders and residents of the county in which such business is proposed to be carried on, each of whom shall justify in a sum equal to the amount of the bond over and above all indebtedness and all exemptions from sale on execution, and all liability on other bonds, which bond shall be in such form as shall be prescribed by the commissioner. There shall also be annexed to each bond required by this act the affidavit of each surety thereto, which affidavit shall state that affiant is not a surety upon any other bond required by the provisions of this act, that he is a male resident and freeholder of the county in which said principal proposes to carry on the business of a druggist, and that he is worth in real estate appearing of record in his name (giving liber and page) situate within the county

in which the business is proposed to be carried on, having an assessed valuation in a sum equal to the amount of the bond over and above all indebtedness and exemptions from sale on executions, and if, in the judgment of said board, council or commission, said sureties, or either of them, are not worth the full sum mentioned in said bond, over and above all their liabilities and exemptions, the said township board, village, or city council or commission shall refuse to approve said bond. Said bond shall not be received by the county treasurer unless the approval thereof by the said board, council or commission shall be duly certified thereon in writing. Act. 338 of 1917, Sec. 22.

699. Signing, by Township Board, of Statements, Etc., Under Tax Law.—Where any statement, certificate, or record is required to be made or signed by a township board, such statement, certificate, or record may be made and signed by the members of such board, or a majority thereof, and it shall not be necessary that others members be present when each signs the same. § 4098.

700. Board to Issue Township Bonds.—The provisions of law relative to the issuing of bonds to pay judgments against townships and to refund and extend the time of payment of such bonds, are compiled in Secs. 117 to 127 of this Guide.

701. Duties of Board Relating to Highways and Bridges.—The provisions of law prescribing the duties of the township board relating to highways and bridges are compiled in Part XV of this Guide.

702. May Expend Money and Direct Observance of Memorial Day.—It is lawful for the township board of any township, in this State, to appropriate money for the purpose of defraying the expenses of the proper observance of Memorial or Decoration Day. The amount expended in any one year under the provisions of this act shall be limited, in any township, having a population of less than five thousand inhabitants, to a sum not exceeding fifty dollars. The sum hereby authorized to be appropriated shall be assessed, levied and collected in the same manner as other expenses of such township are assessed, levied and collected. The manner and extent of such observance of Memorial or Decoration Day shall be under the direction of the township board of the township, and the expense thereof shall be paid in the same manner as other expenses of such township are paid. § § 3296-97.

703. Establishment of Township Park.—For powers and duties of the township board relative to free public parks, see Chapter X of Part I, being Sections 128 to 137 of this Guide.

704. Board to Audit Expenses Incurred for the Support of the Poor.—The township board shall compare the supervisor's account of moneys expended for the use of the poor, with the entries in the poor-books aforesaid, and examine the vouchers in support thereof, and shall audit and settle the same, and state the balance due from such supervisor, or to them, as the case may be. No credit shall be allowed to any supervisor for moneys paid, unless it shall appear that such payment was made pursuant to a legal order. § 5249.

705. Boards to Settle Accounts of Supervisors and Justices.—The accounts of such supervisors and justices of the peace, for any personal or official services rendered by them in relation to the poor, except county paupers, shall be audited and settled by the township boards of their

respective townships, and the sums so audited and allowed shall be paid by the township treasurer. No allowance for time or services shall be made to any officer for attending any board with any accounts, for the purpose of having the same audited or paid. § 5253.

706. Allowances Board May Make to Supervisor.—In auditing the accounts of any supervisor, by the proper township board, allowance shall be made to such supervisor for all costs to which he may have been subjected, or which may have been recovered against him, in any suit brought by him pursuant to law; and he shall also be allowed the same daily pay for attending to any such suit, as is allowed him for the performance of his official duties. § 5255.

707. Credit for Allowances.—Such allowances may be credited to them, in their accounts for moneys collected for penalties, and may be deducted from such moneys; and the balance of such penalties shall be paid over to the township or county treasurer, as directed by law, in respect to such penalties. § 5256.

708. Board Shall Require Bond of Contractors on Public Buildings.—When public buildings or other public works are about to be built, repaired or ornamented under contract at the expense of any township, it is the duty of the board of officers or agents, contracting on behalf of the township, to require sufficient security by bond, for the payment by the contractor of all subcontractors and for the payment for all labor performed and materials furnished in the erection, repairing or ornamenting of such building or works. § 14827. [Form No. 26.]

FAILURE TO REQUIRE BOND: Officers who contract for the erection of public buildings and fail to require security are liable in damages at the suit of laborers and material men injured thereby.—Wells v. Bd. of Education, 78 / 260.

709. Conditions of Contractor's Bonds, Which Board Shall Approve.—Such bond shall be executed by such contractor to the people of the State of Michigan in such amount and with such sureties as shall be approved by the board of officers or agents acting on behalf of the township, as aforesaid, and shall be conditioned for the payment by such contractor to any subcontractor or by any such contractor or subcontractor, as the same may become due and payable, of all indebtedness which may arise from said contractor to a subcontractor or party performing labor or furnishing materials, or any subcontractor to any person, firm or corporation, on account of any labor performed or materials furnished in the erection, repairing or ornamentation of such building, improvement or works. But the principal contractor shall not be required to make any payment, to a subcontractor, of sums due from the subcontractor to parties performing labor or furnishing materials, except upon the receipt or the written orders of such parties to pay the sums due to them to subcontractors. § 14829. [See Form No. 26.]

710. Bond Shall Be Deposited With Board.—Such bond shall be deposited with, and held by, such board of officers or agents, for the use of any party interested therein. § 14829.

711. Proceedings When Expenditure for Roads or Bridges Is Over $1,000.—The duties of the township board in cases where a greater expenditure is required than that authorized by Chapter II of the General Highway Law, providing for taxes for highway purposes, are compiled in sections 226, 227 and 228 of this Guide.

712. Duties of Upper Peninsula Boards as to Licensing of Peddlers.—The township board of any township in the Upper Peninsula of Michigan may, at any meeting, regular or special, license hawkers, peddlers, and pawnbrokers, and hawking and peddling, and may regulate and license the sale or peddling of goods, wares, merchandise, refreshments, or any kind of property or thing, by persons going about from place to place in the township for that purpose, or from any stand, cart, vehicle or other device, in the streets, highways, or in or upon the wharves, docks, open places or spaces, public grounds or public buildings in the township. But in no case such license shall exceed the sum of one hundred dollars for peddling in such township. The action of the township board in licensing hawkers and peddlers, and in regulating and licensing the sale of goods, wares, merchandise, refreshments, or any kind of property or thing, under the above section, shall be by resolution of the board, which resolution shall be spread at length upon the records of its proceedings. Such resolution may be annulled or amended by resolution of the township board, passed at any subsequent meeting thereof, and spread at length upon the records of its proceedings; but such resolution, or any resolution annulling or amending the same, shall not take effect until twenty days after a written or printed copy of the same shall have been posted in five of the most public places in the township. The person or persons posting copies of any resolution, as is here provided, shall make and file with the township clerk of the township an affidavit or affidavits of the fact of such posting. And in all suits, actions or proceedings where the passage of any resolution by the township board, authorized by the provisions of this act, or the posting of copies thereof, as above provided, shall come in question, a copy of such resolution, and of such affidavit or affidavits, certified under the hand of the township clerk of the township, shall be prima facie evidence of the due passage of such resolution, and of the due posting of copies thereof. No license shall be granted for any term beyond the first Monday in May, next thereafter, nor shall any license be transferable. All sums, received for licenses granted under authority of this act, shall be paid into the township treasury of the township granting the license, and credited to the contingent fund. Every person who, without license, shall, within the limits of the township, exercise any occupation or trade, or do anything for or in respect to which any license shall be required by resolution or regulation of the township board of any township, made or passed under authority of this act, or who shall be found selling or trading, or offering for sale or trade any goods, wares, merchandise, refreshments or any kind of property or thing, within the limits of the township, contrary to the terms of any license granted to him shall, for each offense, forfeit the sum of fifty dollars, or be imprisoned in the county jail not to exceed ninety days, or both such fine and imprisonment, in the discretion of the court. Nothing in this act contained shall include any person who shall sell or offer to sell agricultural, garden or dairy products, or any fruit, shade or ornamental tree, plant, shrub or bush, agricultural machinery, tools, implements, or vehicles, and all kinds of meat and fish. § § 6979-83.

713. Railroad Aid Bonds.—In case of the non-payment of certain bonds issued prior to May 26, 1870, the township board is authorized to levy a tax for the payment thereof, etc. § § 4199-4204.

NOTE: As there are very few, if any, of such bonds still outstanding, it is not deemed necessary to insert here the details of this law.

714. Board to Appoint Fruit and Orchard Inspectors.—As soon as information comes to the township board or any member thereof, that insects and disease exist among trees, or danger is apprehended of their introduction, it is the duty of the board to appoint three competent freeholders of such township to be known as fruit and orchard inspectors. § 7423. See Sec. 1003 of this Guide.

715. When Board May Allow Bounty for Killing Wolves.—The township boards of the several townships of this State have power, at the expense of their respective townships, to award and allow such other bounties for the destruction of wolves, wolf-whelps, and such bounties for the destruction of panthers and other noxious animals, within their respective townships, as the qualified electors of each shall have voted at the annual township meeting next preceding; and such additional and other bounties, when duly allowed and certified in such manner as the township board may prescribe, shall be paid out of the township treasury; but neither of the bounties provided for in this section shall exceed in amount the sum of two dollars. § 7256.

716. Appointment of Building Committee to Unite With G. A. R.—When a township unites with the Grand Army of the Republic in erecting a memorial building, the township board shall appoint a building committee, and perform certain other duties. See Sec. 141 of this Guide.

717. Authority to Lease Public Building to Grand Army Post.—Any township in the State of Michigan is hereby authorized to lease for any period not exceeding five years each, to any post of the Grand Army of the Republic, established in any such township, to be used by such post, any public building or any part thereof, belonging to any such township, except schoolhouses in actual use as such, at a nominal rent to be fixed by the township board. § 1040.

718. Board Shall Provide for Expenses of Burying Grounds.—When the board of health of any township has incurred any lawful expenses in the purchase, fencing and regulating of a burying ground for such township, and certified such expenses to the township board, such expenses are to be provided for by such board as a part of the contingent expenses of the township. See Sec. 863 of this Guide.

719. Board Shall Assign Places for Carrying on Offensive Trades.—The township board of every township, when they shall judge it necessary, shall, from time to time, assign certain places for the exercising of any trade or employment offensive to the inhabitants or dangerous to the public health; and they shall forbid the exercise thereof in places not so assigned; and all such assignments shall be entered in the records of the township, and they may be revoked when the said township officers may think proper. § 5087. [See Form No. 27.]

720. Township Board to Be Building Inspectors.—In every township in this State, the township board is hereby constituted the board of building inspectors in such township, and shall perform and exercise the powers and duties of building inspectors. § 7214. Each building inspector shall be entitled to receive for each day he is actually employed in inspecting any building under the provision of this act (§ § 7212-18), to be paid by the owner or person requesting such inspection and examination, such sum as may be fixed by the township board. § 7218.

721. **Building Inspectors to Report to Township Board.**—It is the duty of the board of building inspectors to examine from time to time, at least once in each year, within their respective jurisdictions, any and all such places mentioned in the preceding sections of this act, and to submit without delay to their respective township boards such recommendations, in addition to the provisions and requirements of this act, as they may deem proper and necessary for the protection against fire, and the escape therefrom, in the several places named in the preceding sections of this act. § 6957.

722. **Board to Make Needful Alterations.**—It is the duty of township boards, on receiving such report, to direct all such needful alterations and additions to such places, as recommended for the safety and escape from fire, to be made within such reasonable time as they may determine, by causing a written notice to be served on the owner, proprietor, manager, lessee, or keeper of such several places, stating therein fully the alterations and additions to be made, and the time for their completion. The expenses incurred in providing such ladders or fire escapes, or in making such needful alterations or additions, shall be paid by the owner of such places. § 6958.

723. **Board to Appoint Persons to Examine Hotels.**—It is the duty of the township board, in every township, in which is located any hotel of more than two stories high, to appoint a committee of three persons to visit and examine such hotel and to report such recommendations as they may deem proper for the protection of guests from danger from fire. § 6961.

724. **Board to Order Alterations in Hotels.**—It is the duty of the township board, on receiving such report, to cause all needful alterations and additions or provisions, necessary for the safety of guests from fire, to be made within sixty days, and cause a notice to be served on the owner or keeper of such hotel, stating the alterations and additions or provisions to be made, either by ropes furnished the sleeping rooms of the hotels, or by ladders and such other means as they may think best to secure the safety of the guests; and all such expense shall be paid by the owner thereof. § 6962.

725. **Board to Make Annual Examination of Hotels.**—It is the duty of the township board to examine or cause to be examined, at least once in each and every year, all such hotels within their respective corporations; and it is their duty to enforce or cause to be enforced the provisions of this act; but this act (§ § 6960-63) shall not apply to hotels having less than thirty rooms used for guests. § 6963.

726. **Board May Make Settlement of Certain Taxes Against State Lands.**—It is lawful for the township board of any township of this state to make a compromise settlement, and determine thereby the sum which the commissioner of the state land office may receive in extinguishment of the ditch, drain, or other taxes charged against any description of vacant or part-paid swamp, school or other state lands lying in such township, previous to the year nineteen hundred three, which sum, when so determined by the township board and certified to the commissioner of the state land office, as to any specific description of such lands, may be paid in lieu of all such ditch, drain or other taxes, interest and charges on the books of said office against such descriptions. But it is the duty

of the several township boards, before making such adjustment and settlement, to examine each description of land affected thereby, also to ascertain the amount of taxes and charges against said lands; and said authority to compromise shall not extend to taxes legally levied and assessed against the interests held in part-paid lands by individuals. § 4188.

727. Board May License Shows and Exhibitions.—The township board of any township may, at any meeting held for that purpose, license theatrical exhibitions, public shows, and such other exhibitions as they deem proper, to which admission is obtained on payment of money, upon such terms and conditions as they think reasonable, and may regulate the same in such manner as they think necessary for the preservation of order and decorum, and to prevent any danger to the public peace; but no such license shall be in force for a longer time than the officers granting the same shall have been elected to office. § 3474. [See Form No. 28.]

728. When Township Board to Prohibit Setting of Forest Fires.—The township boards of the several townships are authorized and it is their duty, to prohibit the setting of forest fires or fires for the purpose of clearing lands, and disposing, by burning, of refuse material and waste matter within their respective jurisdictions, whenever, in the judgment of a majority of the members, it is deemed necessary to prevent the spreading of such fires over the territory of such township, or any part thereof. Each of such boards may make such rules and regulations as they may deem proper for the purpose of carrying these provisions into effect, which rules and regulations shall be published by posting notices thereof, together with a copy of this act, in five of the most public places in such township. § 15427.

NOTE: The act referred to is § § 15424-29, C. L. of 1915.

729. Penalty for Violation of Orders of Township Board.—Whenever, in pursuance of the authority given, any township board shall designate a period, during which it shall be unlawful to set such fires, any person who is found guilty of violating the order of such board by setting any such fire in such township, contrary to the provisions of any section of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to the same punishment as is prescribed in section one (§ 15424) of this chapter. § 15428.

NOTE: The act referred to is § § 15424-29, C. L. of 1915.

730. Board May Permit Burning of Refuse.—Any person desiring to dispose of refuse material by burning the same, during the time prohibited by the board of such township, may do so after first procuring permission in writing, signed by the supervisor and township clerk, or by a majority of such township board, and the said supervisor and township clerk, or a majority of the said board, are hereby authorized to grant such permission, in their discretion, under such conditions as they may prescribe, upon application made in writing for such purpose. § 15428.

731. Board May Repeal Action.—The board is authorized, at any time, to repeal by resolution any action theretofore taken by them under the provisions of the last three preceding sections. § 15428.

732. Compensation of Members of Township Boards.—The officers composing the township board are entitled to receive for their services as such, three dollars per day, and at the same rate for parts of days. See Sec. 282 of this Guide.

733. Board May Allow Compensation for Services Not Otherwise Provided For.—For services, not otherwise provided for by law, rendered to townships by township officers in the duties of their respective offices, the township board shall audit and allow such compensation as they deem reasonable. § 2155.

734. Duties of Board as to Creation and Abolition of Election Precincts.—For the powers of township boards in the creation of election precincts in townships and the abolition of the same, see Secs. 408 to 414 of this Guide.

735. Duties of Town Board as Board of Election Commissioners.—The township board of each township shall be the board of election commissioners for township, and shall perform such duties relative to the preparation, printing and delivery of ballots as are required by law of the boards of election commissioners of counties. Like duties and privileges as are enjoined and granted by this act upon and to the various committees of the different political organizations are hereby prescribed for township committees in matters pertaining to any township election except that it shall not be necessary for a township committee of a political party or organization to furnish a vignette or heading for the ballots other than to designate the name of the party or polititcal organization which they represent. In townships the names of candidates for township offices shall be given by the committees of the various political organizations to the board of election commissioners of such township not less than eighteen days before each election. The proof copy of the ballot shall be open to public inspection at the office of the township clerk, not less than fifteen days before such election. Act 203 of 1917, Chap. IX, Sec. 28.

736. Board Shall Prepare Ballots.—The board of election commissioners of each county shall prepare the official ballots for use at any state, district or county election held therein, and shall have printed a sufficient number of ballots, containing the names of all candidates properly certified to said board of election commissioners, and ballots for questions to be submitted at such election, to supply each election precinct in such county with a sufficient number for such precinct, and not less than twenty-five per centum more of each kind of ballot than the number of votes cast in said precinct at the last preceding general November election for the office of secretary of state. Act 203 of 1917, Chap. IX, Sec. 7.

NOTE: This section is applicable to township boards of election commissioners. See preceding section of this Guide.

737. What Names Board Shall Print on Ballots.—The said board of election commissioners shall cause to be printed on the ballot (or ballot labels or slips to be placed on a voting machine, when used) the names of the candidates certified to said board pursuant to this act; but the name of no candidate shall be placed or printed in more than one column on the ballot for the same office. Any person who receives the nomination for the same office by two or more parties or political organizations

shall, within five days after his name has been certified to said election commission as having been nominated by two or more political parties for the same office, give notice to the board of election commissioners specifying in such notice the column of which party or political organization on the ballot or voting machine he wishes his name to be printed or placed. Said board of election commissioners shall print or place the name of such candidate in such column on the ballot so specified by him, and in no other column. Such notice shall be given to said election commissioners by delivering the same either in person or by depositing the same in the postoffice in a sealed envelope, with postage prepaid, directed to the chairman of such board. In case any such candidate, so nominated by two or more parties or political organizations for the same office, and whose name shall have been certified pursuant to law to the said board of election commissioners, shall refuse or neglect to give notice to said board of election commissioners as above provided, and within the time above named, the said board of election commissioners shall cause his name to be printed or placed in the column of the party or political organization, from the chairman and secretary of whose committee said board of election commissioners shall have first received notice of such person's nomination for said office. All the provisions of this section shall apply to all township elections held in this state, except that the notice herein required to be given by a candidate shall, in case of a township office, be given by him to the proper city, village or township board of election commissioners within two days after his name has been so certified as nominated by two or more political parties for the same office. Act 203 of 1917, Ch. IX, Sec. 8.

NOTE: The above is an abstract of the duties of the county commissioners, which are made, by Sec. 354, applicable to township commissioners.

738. Resignations to Be Addressed to Township Board.—Resignations of all officers elected at township meetings shall be in writing, signed by the officer resigning, and addressed to the township board, and shall be delivered to the township clerk. § 2105.

739. Approval by Township Board of Town Map or Plat.—Before such map or plat shall be approved by the auditor general, and before such map or plat shall be recorded by the register of deeds, the proprietor or proprietors thereof shall cause to be attached to said map or plat a certificate of approval from the township board having jurisdiction over the lands so described in the said map or plat: Provided, That if said township board refuse to approve said map or plat it shall notify in writing, within five days, the proprietor or proprietors, or their agents, of such non-approval, giving its reasons therefor. See § 3350, C. L. of 1915.

740. Board Shall Carefully Examine Town Map or Plat.—It shall be the duty of the township board whenever any map or plat is submitted to them to carefully examine the same for the purpose of determining whether or not the caption of said map or plat conflicts in any way with the title or caption of any other map or plat previously recorded in the office of the register of deeds of said county, and also for the purpose of ascertaining whether or not the streets and alleys in such map or plat conform, in their opinion, to the streets and alleys in any adjoining map or plat heretofore recorded; and are so named that no name previously

in use in the same city or village shall be made use of except in continuing a street or alley. § 3350.

741. In Wayne County, Claims Contracted by Commissioner to Be Audited.—In any township in a county containing a population of three hundred fifty thousand or over, all claims for labor, materials purchased or incidental expenses contracted by highway commissioners shall be presented to the township board for audit and allowance, and, when allowed, shall be paid in the same manner as other claims against townships, by warrant or order drawn on the township treasurer and signed by the township clerk and supervisor. § 4748.

This section applies to Wayne county only.

742. Board Shall Audit Accounts for Cutting Noxious Weeds.—Highway commissioners and overseers of highway are required to make sworn statement of their accounts for the cutting of noxious weeds and present same to the township board. The township board is authorized and required to audit and allow such accounts and order the same to be paid from the fund for general township purposes of said township out of any moneys in the township treasury not otherwise appropriated. See § 4606, C. L. of 1915.

743. Duties of Township Board as to School Districts.—The provisions of law for the organization and government of school districts and the duties of township boards relative thereto are compiled in Part X of this Guide.

744. Town Board May Purchase and Maintain Scales.—It shall be lawful for the township board of any township or village council of any village in this State to appropriate money for the purpose of establishing township or village scales for the weighing of farm produce and for other purposes. All sums hereby authorized to be appropriated shall be assessed, levied and collected in the same manner as other expenses of such townships or villages are assessed, levied and collected. The maintenance, management and control of such scales shall be under the direction of the township board or village council, as the case may be, and the expense connected therewith shall be paid in the same manner as other expenses of such townships or villages are paid. Act 123 of 1917, Sec. 1.

745. Town Board May Provide for Lighting Highways in Unincorporated Villages.—The township board of any township in which there is situated an unincorporated village may, by a majority vote of such board at any regular meeting or any special meeting called for that purpose, provide for the lighting by artificial means of any of the highways in such village, and the expense of such lighting shall be paid out of the highway improvement fund: Provided, That there shall be not more than the sum of two hundred fifty dollars spent in any one year for the purpose herein provided for: Provided, also, That where such unincorporated village is situated in two or more townships, such provision shall be made by a majority vote of all the township boards in which such village shall be situated at a joint meeting of such township boards held for that purpose, and the proportion of such expense to be paid by each of such townships shall be determined at such joint meeting. Act 264 of 1917, Sec. 1. See also Sec. 1807 of this Guide.

746. When Joint Boards to Determine Which Commissioner Shall Act.—Where the incorporated village referred to in the preceding section is situated in two or more townships, it shall be determined at the joint meeting of such township boards which one of the township highway commissioners shall have supervision of the lighting system. See Sec. 1807 of this Guide.

747. When Board May Borrow Money and Issue Bonds for Library.—When a majority of the voters of a township, voting thereon at a township meeting, a general election, or at a special election called by the township board, shall vote in favor of borrowing not exceeding one per cent of the assessed valuation of the township and issuing the bond or bonds for the purpose of establishing a free public library, the township board is authorized to borrow said money and issue said bond or bonds. The proceedings had in case of application are prescribed in Act 5 of 1917, compiled in Sec. 112 of this Guide.

748. Appeal by Township Under "Covert" Highway Law.—Any township at large assessed a per cent for any benefit for the improvement of any highway by the county road commissioners or by the state highway commissioner may, within ten days after the final hearing of the review heretofore provided for, appeal therefrom, and for such purpose make an application to the probate court of the proper county for the appointment of a board of review, as hereinafter provided. Townships shall appear by their respective supervisors. The supervisor shall act upon the direction of his township board. Only one application for a board of review shall be entertained by the probate court to review any special assessment. § 4711. As Am. by Act 125 of 1917.

749. Board to Submit Question of Forming Health District.—The township board, on petition, shall submit to the electors the question of the formation of a health district by the uniting of two or more contiguous townships. See Act 130 of 1917, being Secs. 909 to 917 of this Guide.

750. Town Board to Appoint Member of District Board of Health.—Upon the formation of a health district by the uniting of two or more contiguous townships, the township board of each township shall select by ballot a member of the district board of health. See Sec. 912 of this Guide.

751. Annual Account of Health District to Be Presented to Town Board.—The annual account of expenditures by the district health board shall be presented to the township board at the same time the estimates are presented, and such account shall be incorporated in the minutes of the township board and published as a part thereof. See Sec. 915 of this Guide.

752. School Districts.—The provisions of law prescribing the powers and duties of the township boards relating to school districts are compiled in Part X, being Secs. 918 to 1001 of this Guide.

CHAPTER II.

DISPOSITION OF LANDS ON DIVISION OF TOWNSHIP AND APPORTIONMENT OF MONEYS AND OTHER PROPERTY.

753. Boards to Make Agreement as to Disposition of Lands.—When a township seized of lands is divided into two or more townships, the township boards of the several townships constituted by such division shall meet, as soon as may be after the first township meetings subsequently held in such townships, and when so met shall have power to make such agreement concerning the disposition to be made of such township lands, and the apportionment of the proceeds in case of a sale thereof, as they think equitable, and to take all measures, and execute all conveyances which may be necessary to carry said agreement into effect. § 2198.

DIVISION OF TOWNSHIP: This chapter is Ch. 67, C. L. of 1915. Prior to 1881, when § 2205 was added, it contained no provision whatever for any division of property except between townships created or continued as such by the division. The whole machinery provided is township machinery, and there is nothing which divests a township of any rights in favor of a city or provides any means for apportioning property or debts between city and township.—Buena Vista Bd. of Health v. East Saginaw, 45 / 257, 259.

AGREEMENT: It has been the policy of the State to leave the financial arrangement, on dividing municipalities, chiefly to the business discretion of the administrative authorities, rather than to the courts.—Midland v. Roscommon, 39 / 424. See also Twp. of Grant v. Twp. of Reno, 107 / 409, 413. There is nothing in this section to authorize an agreement by one of the succeeding towns to pay the other the estimated amount expended on highways in its territory in excess of that spent in the other.—Twp. of North Allis v. Twp. of Allis, 142 / 137, 139.

LEGAL IDENTITY: The legal identity of a township remains unchanged after division, so far as corporate existence is concerned.—Bd. of Health v. East Saginaw, 45 / 257, 259. Courtright v. Brooks Twp. Clerk, 54 / 182, 184; People v. Maynard, 15 / 469.

And the property rights of a corporation are unaffected by such changes as leave its corporate character in existence, and do not destroy its corporate identity.—Bd. of Health v. East Saginaw, 45 / 257, 261.

But that portion of territory taken away from an organized township, until newly organized or attached to some other township, ceases to have any township existence.—People v. Maynard, 15 / 463, 469.

TOWNSHIPS AND CITIES: For provisions relative to adjustment of rights and liabilities on division of territory of townships and cities, see Chapter III of this Part, being Sections 761 to 775.

COMPETENCY OF BOARD: Where unsettled accounts between two townships are adjusted by their boards at a joint meeting, one of the townships cannot afterward maintain a bill against the other to set aside the settlement, on the ground that its own board was inferior to the other in ability, experience or knowledge, or that it was misled by the other as to the true financial condition of its own township. And the complaining township cannot distinguish between itself and its board for the purpose of escaping the consequence of the latter's negligence. Every township board is presumed competent to attend to the business it has to do, and in that respect to be equal in ability to any other board with which it deals.

The misrepresentation to a public board of facts which they can ascertain and are bound to know as pertaining to their own duties, but as to which they neglect to inform themselves, does not furnish any substantial ground for remedial equity.—Churchill v. Cummings, 51 / 446.

See also Chapter III of this Part, being Sections 761 to 775.

754. When Boards Shall Meet to Make Disposition of Lands.—When a township is altered in its limits, by annexing a part of its territory to another township or townships, the township board of the township from which such territory is taken, and of the township or townships, to which the same is annexed, shall, as soon as may be after such alteration, meet for the purpose and possess the powers provided in the preceding section. § 2199.

755. If Boards Cannot Agree, Then Land to be Sold and Proceeds Divided.—If no agreement for the disposition of such lands is made by the township boards within six months after such alteration or division, then the township board of each township in which any portion of such lands lie, shall proceed, as soon as may be thereafter, to sell and convey such part of said lands, included within the limits of such township; and the

proceeds arising from such sale shall be apportioned between the several townships interested therein, by the township boards of all such townships, according to the amount of taxable property in the township divided or altered, as it existed immediately before such division or alteration, to be ascertained by the last assessment roll of such township. § 2200.

CITED: Sheridan Twp. v. Frost Twp., 62 / 137.

756. Apportionment of Moneys, Rights and Credits Between Townships.—When a township possessed of, or entitled to, money, rights and credits, or other personal estate, is so divided or altered, such moneys, rights, credits and personal estate, including moneys belonging to the township, in the hands of township officers, shall be apportioned between the townships interested therein, by the township boards of such townships, according to the rule of apportionment above prescribed; and they shall meet for that purpose as soon as may be after the first township meetings subsequently held in such township. § 2201.

COMPELLING PAYMENT: Where, upon a division of townships an adjustment is made, as in this chapter provided, and any sum is agreed and fixed upon, to be paid to one township by the other, such sum becomes thereby a township charge against the latter, and payment may be compelled by mandamus, but not by suit to recover judgment.—Marathon v. Oregon, 8 / 372.
See also Sheridan Twp. v. Frost Twp., 62 / 137.

757. Meeting of Township Boards, How Called.—Whenever a meeting of the township boards of two or more townships is required, in order to carry into effect the provisions of this chapter, such meeting may be called by either of the supervisors; but the supervisor calling the same must give at least six days' notice in writing, to all the other officers, of the time and place at which such meeting is to be held. § 2202.

758. Qualifications as to Cemetery.—The preceding sections do not apply to any cemetery or burying grounds belonging to a township; but the same belongs to the township within which it may be situated, after a division has been made. § 2203.

CITY CEMETERY: In providing that where a township is divided, its burying ground shall belong to the township in which it lies thereafter, does not apply to a case where the cemetery falls within the limits of a city incorporated from the township.—Bd. of Health v. East Saginaw, 45 / 257. See note following section 760 of this Guide.

759. Debts to be Apportioned Same as Personal Property.—Debts owing by a township so divided or altered, shall be apportioned in the same manner as the personal property of such township; and each township shall thereafter be charged with and pay its share of the debts, according to such apportionment. § 2204.

CITED: Sheridan Twp. v. Frost Twp., 62 / 137; North Allis Twp. v. Allis Twp., 142 / 139.

760. Proceedings When Boards Neglect or Refuse to Act.—In case the township board or boards of any townships, or the proper board of officers of any township, neglect or refuse to meet as provided in the preceding sections, or having met refuse or neglect to arrive at a settlement of the matters and things in difference between them, as provided in this chapter, the township or city whose board so refuses or neglects shall be liable to an action for an accounting and settlement in a suit in chancery, in accordance with the practice therein in the same manner

and to the same effect as may be had between individuals or private corporations. § 2205.

SIX YEARS: Proceedings under this section for an accounting and settlement, between townships, must be commenced within six years after the right of action accrues, in the absence of controlling equities to the contrary.—Sheridan Twp. v. Frost Twp., 62 / 136. See also Churchill Twp. v. Cummings Twp., 51 / 446, 448.

LATER ACT: The legislature of 1883 passed an act entitled "An act to provide for adjustment of rights and liabilities on division of territory of cities and townships," (§ § 3452-61) which, to a considerable extent, contains the foregoing provisions of this Part, but with no intimation of its being either a repealing or an amendatory act. Where, therefore, two different methods of procedure are prescribed, by these enactments, the ruling of the Supreme Court in a similar case, indicates that the officials acting thereunder should be governed by the later provision, as, "a new statute covering the same ground with an old one supersedes it for all further cases without the necessity of repeating words."—People v. Hobson, 48 § 27. The act of 1883 referred to in this decision is compiled in Chap. III of this Part.

See notes to previous sections of this Part.

CHAPTER III.

ADJUSTMENT OF RIGHTS AND LIABILITIES ON DIVISION OF CITIES AND TOWNSHIPS.

761. Division of Moneys, Rights, Credits and Personal Property.—When land shall be detached from any city or township in this State and attached to any city or township, or organized into a new township, the moneys, rights, credits and personal property belonging to any city or township, the boundary of which may be so changed, or from which a new township shall be organized, shall be divided between said cities, townships, or city and township; the city or township to which said territory is attached, or the newly organized township, as the case may be, to have such a proportion as the value of the taxable property attached thereto, or embraced in such new township, bears to the whole value of the taxable property of the city or township from which said territory was detached, and the city or township from which territory is detached shall be entitled to the balance of said moneys, rights, credits and personal property, the value of said taxable property to be ascertained from the assessment roll of said city or township made immediately before such change of boundary. In case said assessment roll shall have been lost or destroyed, the value of said taxable property may be ascertained by the assessment or tax roll of said city or township made before and nearest to the time of said change of boundary, which can be produced; and in case all of the assessment and tax rolls of said city or township made prior to such division or organization of the new township shall have been lost or destroyed, then the value of said taxable property may be determined by any other competent evidence. § 3452.

CONSTRUED: The provisions of this section apply also where a township is formed by taking territory from two existing townships, especially where the act creating the new township recognizes that liability may attach to it, from the fact of organization. Gladwin Twp. v. Bourrett Twp., 131 / 353.

A township is not completely organized for the assessment, levy and collection of taxes until the election of its proper officers; and until then the township from which it is set off may levy and collect the taxes.—Comins v. Harrisville, 45 / 442.

Detaching territory from a township does not affect its ownership of anything but the land, unless the law provides for the transfer of other rights; if it does not, debts and other incorporeal rights still belong to the township.—Springwells v. County Treasurer, 58 / 240.

See, also, notes under Secs. 753 and 760 of the preceding Chapter of this Guide.

762. Lands to Be Sold and Proceeds Divided.—When the boundary of any city or township shall be changed in the manner provided in the preceding section, any land of which such city or township, from which said territory is detached, shall be seized, shall be sold by the proper city or township authorities of the city or township in which said land

was located before the division, and the moneys derived from such sale shall be divided between the said city and township in the manner provided in the preceding section; and the city or township in which the said land may be situated after the change of boundary may purchase the said real estate. § 3453.

763. Cemeteries and Burying Grounds.—The preceding section shall not apply to any cemetery or burying ground belonging to any city or township, but the same shall belong to the city or township within which it may be situated after the division shall have been made. § 3454.

764. Apportionment of Indebtedness.—All debts owing by a city or township from which territory has been detached, as provided for in Section 761, shall be apportioned in the same manner as the personal property of such city or township, and each city and township shall be charged with and pay its share of the debts according to such apportionment. § 3455.

CITED: Atty. Gen. v. Springwells Twp. Bd., 143 / 534.

765. Notice and Time of Meeting to Make Settlement.—As soon after the said change of boundary as practicable either any city or township, the boundary of which has been changed, may give notice to the other cities or townships, the boundaries of which have been changed by such division, to meet with said city or township giving the notice, for a settlement of the matters in difference between said cities or city and township growing out of the said division and change of boundary, which notice may be served, in case of cities, upon the mayor of the city, and in case of townships upon the township clerk, and such notice shall specify the object for which it is given, the place of meeting, which shall be in one of said cities or townships, and the time of such meeting, which shall not be less than twenty days after service of such notice as aforesaid. § 3456. [See Form No. 29.]

766. Township Board to Represent Township in Settlement.—If said notice is given by a city it shall be the duty of the mayor of said city to appoint a committee of four from the aldermen of said city to meet with the township board of any such township and settle the matters in difference between the city and townships. And it shall be the duty of the mayor of any city, upon which such notice shall be served, to appoint from the aldermen of the city a committee of four for like purpose; and the township clerk of the township upon which such notice shall be served, shall immediately give notice to the members of the township board of the time and place said meeting has been called, and it shall be the duty of said committees so appointed in such cities and the township boards of any such townships, to meet at the time and place designated in the notice, and make a fair and equitable division of the money, rights, credits, and personal estate, and apportionment of the indebtedness of said cities or townships from which territory has been detached, as provided in Section 1 of this act, between the said city and township. § 3457. [See Form No. 29.]

Where unsettled accounts between two townships are adjusted by their boards at a joint meeting, one of the townships cannot afterward maintain a bill against the other to set aside the settlement, on the ground that its own board was inferior to the other in ability, experience or knowledge, or that it was misled by the other as to the true financial condition of its own township. And the complaining township cannot distinguish between itself and its board for the purpose of escaping the consequence of the latter's negligence.—Churchill v. Cummings,

51 / 446. Every township board is presumed competent to attend to the business it has to do, and in that respect to be equal in ability to any other board with which it deals.—Id. The misrepresentation to a public board of facts which they can ascertain and are bound to know as pertaining to their own duties, but as to which they neglect to inform themselves, does not furnish any substantial ground for remedial equity.—Id.

767. Proceedings if Committees Do Not Arrive at Settlement.—If the mayor of any such city, upon whom such notice shall be served, shall neglect or refuse to appoint a committee as provided for in section six of this act, or the township clerk of any township shall neglect or refuse to notify the township board of the time and place of such meeting, or if said committee be appointed and such township board notified, if they shall neglect or refuse to meet at the time and place specified for the settlement, or having met, shall refuse, fail, or neglect to arrive at a settlement of the matters submitted to them by the preceding sections, then the city or township giving the notice may file a bill in the circuit court in chancery in the proper county against such other city or township as is entitled under the provisions of this act to have a portion of the personal property, money, rights, and effects of the city, village, or township from which said land shall be detached, or liable to contribute to the payment of the debts of the said city, village, or township, for an accounting and settlement, or in such suit in chancery between said city and township, or between such cities, and a decree may be entered in the said case, fixing the amount which each of said cities or townships shall be entitled to of the moneys, rights, credits, and personal property of said city or township, the boundary of which has been changed by detaching territory therefrom as specified in section one of this act, and said decree may also apportion the amount which each of said cities or townships shall be liable for of the indebtedness of any such city or township, from which lands may be detached as above specified. § 3458.

RIGHT TO SUE: See Grant Twp. v. Reno Twp., 107 / 409.

768. Liability for Indebtedness Existing Prior to Change.—Upon payment of any of its indebtedness existing prior to said change of boundary by any city or township, the boundary of which has been changed as provided for in this act, the remaining cities or townships, the boundaries of which have been changed by said division, shall be liable to and pay to the city or township paying any such indebtedness their pro rata share of the indebtedness so paid. § 3459.

769. Act to Apply to Village When Not Part of Township.—This act shall be applied to any change in the boundary of any incorporated village whenever it shall not be a part of any township within this state. § 3460.

770. Act to Apply Where Boundaries Have Been Changed and No Settlement Had.—In all cases where the boundaries of cities or townships have been heretofore changed in the manner specified in section one of this act, and no settlement of the matters in difference between said cities, or city and townships, has been arranged, and no division of the moneys, rights, credits, and personal property of said cities or townships made, or no apportionment of the indebtedness due from the city or township from which territory has been detached in making the division, shall have been made, the provisions of this act shall apply; and the provisions of this act shall extend to such cases and a settlement of said matters

made and enforced in the same manner as though said division was made after the passage and taking effect of this act. § 3461.

771. **How Special Assessments Levied Prior to Detachment, Collected.** —When land shall be detached from any city, township or village in this state and attached to any city, township or village, as provided in section 761, and a special assessment district or districts shall have been created and a special assessment roll or rolls shall have been made and special assessments levied thereon by such city, township or village prior to the detachment therefrom of land, and the same shall not have been paid in full, such city, township or village from which such land is detached or to which such land is annexed may create a new assessment district or districts out of the territory of such special assessment district or districts so attached or remaining, as the case may be, and may make a new assessment roll, and charge the property of such assessment district or districts or the owner or owners thereof with the payment of the whole or any portion of the special assessment unpaid. But in case any part of the assessment so made upon any lot or parcel of land shall have been paid in whole or in part, the said lot or parcel of land in said assessment district or districts shall be credited with the payment thereof upon such new assessment roll, or a certified copy of such special assessment roll may be made by the city, township or village having the custody thereof, and when so made shall be turned over to the municipality to which land has been annexed or detached, as the case may be, as aforesaid; and the collection of the said special assessment upon said assessment district or districts so divided shall be continued in all respects according to law by the proper officer of each of said municipalities upon the portion of the assessment district or districts within either of said municipalities after such annexation or detachment of land as aforesaid; or if the whole of any special assessment district or districts so created shall be annexed to another municipality, a new special assessment may be made upon the territory of the original assessment district or districts by the municipality to which said special assessment district or districts shall have been annexed, and the assessment collected in the same manner as special assessments are collected by such municipality; or the original assessment roll made by the municipality from which the land shall have been taken may be used by the municipality to which the assessment district or districts has been annexed, upon which to collect the assessment or any part thereof; or where any tax whatever has been levied by a municipality and subsequently part of the territory of such municipality shall have been annexed to another municipality, and said tax or any part thereof shall remain uncollected and unpaid, a certified copy of the tax roll shall be made by the municipality having the custody thereof and turned over to the municipality to which a part of such territory has been annexed, and said tax shall then be collected by the proper officer of each of said municipalities upon the portion of territory within the jurisdiction of each, and in case the whole of the territory of a municipality is taken by being annexed to another municipality or a new municipality created therefrom, the tax roll of the municipality making the same may be used by such municipality or the municipality to which such land is annexed, and the tax collected in the same manner as other taxes are collected by municipalities under the law. § 3462.

772. When Court May Apportion Payment of Bonds.—Where a special assessment district shall have been charged with the payment of money evidenced by bond issue or otherwise and the same shall have been divided by the detachment of land as aforesaid, and the authorities of each of the municipalities are unable to agree upon the division and assumption of said bond issue or other indebtedness, then the circuit court in chancery of the county wherein is located the municipality to which land has been attached shall have the power to apportion the payment of said bonds or other evidence of indebtedness between the said special assessment district or districts, according to the proportion each part of said special assessment district or districts should bear when divided. § 3462.

773. Reassessment When Special or General Assessment Declared Void.—If for any reason any special or general assessment or tax levy in this act enumerated shall be declared void by a court of competent jurisdiction on account of any error or omission in the proceedings had or taken in making such special or general assessment or tax levy, the common council or other proper authority of such municipality shall cause a reassessment to be made upon the original assessment district or so much thereof as is within its jurisdiction, in the same manner and with like effect as assessments of like character are made by such municipality for general and special purposes under the charter and laws of such municipality; nor shall any assessment herein mentioned be held invalid by any court on account of any defect or omission in the proceedings had or taken in the making of said assessment, unless the person or persons complaining thereof be required to pay such sum or sums as said court may find the property assessed in said assessment roll shall have been benefited by the making of such assessment. § 3462.

774. Circuit Court May Determine and Adjudicate All Questions Under This Act.—The circuit court in chancery is hereby given full and ample power to determine and adjudicate every question which may arise under the provisions of this chapter, where provision for the solution of such question is not herein already made. § 3462.

775. Applicable to Townships Heretofore or Hereafter Changed.—The foregoing act as in this section amended shall apply and be applicable to all cases where the boundaries of cities, townships or villages have been heretofore changed or may hereafter be changed, in the manner specified in section 761 of this Guide. § 3462.

CHAPTER IV.

DUTIES OF TOWNSHIP BOARD RELATING TO DRAIN.

776. Application for Drain.—Before the county drain commissioner takes any action toward locating, establishing, widening, deepening or extending any drain, there shall be filed with him an application signed by not less than one-half of the freeholders whose lands are traversed by such drain. * * * See § 4880. As. Am. by Act 316 of 1917.

777. Board to Determine Necessity for Drain.—Upon the filing of such application the county drain commissioner authorized to act thereon

shall, as soon as practicable thereafter, notify the township clerk or clerks of the township or townships through which the proposed drain passes of the filing of such petition, giving a copy or copies thereof. Within thirty days after the service of said notice upon him or them, it shall be the duty of the clerk or clerks so notified to call a meeting for joint meeting of the township board or boards, as the case may be, at some place to be designated by said drain commissioner, and which shall be as centrally located as possible, giving notice of the time and place of such meeting and causing a notice thereof to be published for not less than one week in a newspaper published and in general circulation in the county. At the time and place fixed in said notice township board or boards shall meet, and if more than one township be affected then the boards shall meet in joint session, form themselves into one board, elect a chairman and secretary and shall proceed to determine the necessity of said drain and whether the same is necessary and conducive to public health, convenience and welfare. At such meetings all persons owning lands liable to assessment for benefits, or whose lands shall be crossed by said drain, may appear for or against said drain proceedings. After hearing the evidence so offered as herein provided by all persons appearing for or against the drain proceedings, the board or boards, as the case may be, shall make their determination upon the necessity of said drain and whether the same is necessary and conducive to public health, convenience and welfare. If the said board or boards shall find by a majority vote of the whole number of members present and voting thereon that the said drain is not necessary or conducive to public health, convenience or welfare, they shall dismiss the petition and no further petition for said drain shall be legal if made within one year after such determination. If said board or boards by a majority vote, as aforesaid, shall find said drain so proposed to be necessary and conducive to the public health, convenience and welfare, they shall make their order to that effect and file the same with the said county drain commissioner. The members of the township board or boards for their services under this section shall be compensated at the rate provided by section two thousand one hundred fifty-four of the compiled laws of nineteen hundred fifteen, to be paid from the general fund of the township or townships. * * * § 4881. As Am. by Act 316 of 1917.

§ 2154 above referred to is Section 282 of this Guide.

778. Board to Determine Necessity for Cleaning Out Drain.—Whenever a drain or portion thereof needs cleaning out, any five freeholders of the township or townships in which such drain is situated, one or more of whom shall be owners of land liable to an assessment for benefits in the cleaning out, may make application in writing to the county drain commissioner of the county in which such drain is located and the lands to be affected thereby are situated, setting forth the necessity of such proposed work and the county drain commissioner shall proceed in the same manner as is provided in section two of chapter three (Section 777 of this Guide) for the locating, establishing or extending a drain. * * * § 4940. As Am. by Act 316 of 1917.

CHAPTER V.

BONDS FOR BETTER CONSTRUCTION, IMPROVEMENT AND CARE OF HIGHWAYS OR BRIDGES.

779. When Town Board May Issue Bonds for Roads and Bridges.—The township board of any organized township in the State of Michigan is hereby authorized and empowered, upon an application being first filed with such township board, signed by at least twenty-five freeholders of such township, to borrow a sum of money, not exceeding five per centum of the assessed valuation of such township, on the faith and credit of such township, and to issue the bonds of such township therefor, the money so borrowed to be used for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of the township board providing for the better construction, improvement and care of the highways in such township: Provided, That a majority of the legal voters of such township, voting upon said proposition, at a township meeting, a general election or a special election called by the township board for that purpose, shall vote in favor thereof. § 4499. [See Forms Nos. 30, 31, 32, 33 and 34.]

780. Commission to Supervise Work on Roads and Bridges.—The commissioner of highways shall have charge and supervision, under the direction of the township board, of such graveling, macadamizing, building of stone roads, building or repairing of bridges, or any other improvements of the highways of such township, as may be authorized under the provisions of this act, and all moneys paid out therefor shall be paid on the order of the commissioner of highways, countersigned by the township clerk: Provided, That where any township has adopted the township road system, as provided by act number one hundred forty-nine of the public acts of eighteen hundred ninety-three, entitled "An act to provide for a county and township system of roads and to prescribe the powers and duties of the officers having the charge thereof," and acts amendatory thereof, the road commissioners of such townships shall have charge and supervision, as provided in said act number one hundred forty-nine of the public acts of eighteen hundred ninety-three, as aforesaid, and amendatory acts; all moneys paid out for the improvement of highways and bridges shall be paid out on the order of said township road commissioners, countersigned by the township clerk. § 4500.

781. Commissioner to Make Annual Report to Board.—The commissioner of highways shall render to the township board at the annual meeting thereof in each year an account in writing, showing the extent of the improvements that have been made on the highways of the township, the roads that have been constructed, or partially constructed, the number and cost of bridges built or repaired, and the amount of money that has been expended for the respective purposes. § 4500.

782. Board Shall Submit Question of Bond Issue.—The question of issuing the bonds provided for in section 779 shall be submitted to the legal voters of such township by the township board within ninety days after the filing of the application, giving due notice thereof by causing the date, place of voting and object of said election to be stated in written or printed notices to be posted in five public places in such township at least twenty days before the time fixed by said board for such election

and by publishing the same in at least one newspaper published in the township, or if none be published in the township, then in some newspaper published in the same county, which is circulated in such township, at least two weeks before the time of such election, which notice shall state the amount of money proposed to be raised by such bonding and the purpose or purposes to which it shall be applied. § 4501.

783. **Form of Ballot.**—The vote upon such proportion shall be by ballot, either printed or written, or partly printed and partly written, and such ballots shall be in the following form:

For the issuing of township bonds to improve the highways—Yes.

For the issuing of township bonds to improve the highways—No.

The election shall be conducted and the votes canvassed in all respects as in other township elections. § 4502.

784. **Bonds Issued by Town Board.**—If at such election a majority of such qualified electors present thereat and voting upon said proposition shall vote in favor of such loan, said bonds shall be issued by the township board in denominations not exceeding one thousand dollars each, at a rate of interest not exceeding five per centum per annum, and for a period not exceeding twenty-five years, as the township board shall by resolution direct. Said bonds shall be signed by the township board, countersigned by the township treasurer and negotiated by and under the direction of said board, and the moneys arising therefrom shall be used for the purpose or purposes which have been set forth in the notices of election and the ballots cast at such election, and for no other purpose. § 4503.

785. **Tax to Pay Bonds.**—In case any bonds are issued under the provisions of this act it shall be the duty of the township board to raise in each year by tax upon the taxable property of such township such sums of money as shall be sufficient to pay the amount of said bonds and the interest thereon as fast as the same shall become due. § 4504.

786. **Bonds Not to Be Negotiated at Less Than Par.**—No bonds issued under and by virtue of this act shall be used or negotiated at less than their par value. § 4505.

787. **Issue of Bonds in Counties Under County Road System.**—All counties or parts of counties which have adopted the county road system may issue bonds for the payment of the improvement of such highways as the commissioners of highways decide to make, provided, such issue is approved by a vote of the electors of such county or district and that such bonds are not issued in excess of three per cent of the valuation of the property assessable for the said highway improvement. Such bonds shall not run for longer than twenty years, nor be sold for less than par, and the funds arising from the sale of such bonds shall be applied solely to the building of improved highways under the control of the road commissioners for the county or road district. § § 4506-07.

788. **Supervisors May Order Submission of Question.**—The board of supervisors in the county may order an election on the question of issuing such bonds in the county, or road district on petition of twenty-five freeholders, residing in the territory affected, and such election may be held under the provisions of the general election laws. If a general election be held within six months of the filing of such a petition, the question of

issuance of such bonds shall be submitted at such election, but, if not, a special election for this question may be called by the board of supervisors. § § 4508-09.

CHAPTER VI.

PURCHASE OF TOLL OR PLANK ROAD.

789. Township May Purchase Rights, Etc., of Toll Road Company.—Any city, village or township of the State in which any toll road company has the right to maintain gates or collect toll on any street, avenue or highway within said city, village or township, may purchase all or any part of the rights, roads, property, privileges or franchises of said company in such street or highway at a valuation to be agreed upon between the common council of the city or village, or the township board of such township and the board of directors of such toll road company. § 4548.

790. Condemnation Proceedings.—In case no agreement can be reached for such purchase as aforesaid, such city, village or township is authorized to condemn such rights; in which condemnation such city, village or township shall proceed as in the condemnation of lands for streets according to the provisions of act number one hundred twenty-four of the public acts of eighteen hundred eighty-three, and the acts amendatory thereof, so far as the same are applicable, but the damages to which such companies may be entitled shall be paid wholly by such city, village or township. § 4549.

791. Company Authorized to Sell Road.—Any toll or plank road company organized under the laws of this State is hereby authorized to sell such portion or portions of its rights, road, property, privileges and franchises as lie within any city, village or township, to such city, village or township, on such terms as may be mutually agreed upon, and the sale or condemnation of any portion of such road and franchise as lies within any city, village or township to or by such city, village or township shall not deprive any such toll or plank road company from receiving and collecting toll on such length of road as it may have remaining after such sale or condemnation, at the rate of toll per mile as now fixed by law. § 4550.

792. Assessment for Purchase Price.—When any city, village or township shall have acquired any rights, roads, property, privileges or franchises of any toll or plank road company, as aforesaid, by purchase or condemnation as hereinbefore provided (whether such rights, roads, property, privileges or franchises have been acquired by such city, village or township prior to this act, or shall hereafter be acquired by such city, village or township), the common council of such city or village or the township board of such township shall raise by special assessment upon all the real and personal property within such city, village or township, such amount of money as may have been agreed upon between such toll or plank road company and such city, village or township for the sale and purchase of any such rights, roads, property, privileges or franchises or portions thereof, of any toll or plank road company as aforesaid or in the event of condemnation proceedings as herein provided, such sum of money as shall have been awarded to such toll or plank road

company in such condemnation proceedings. Moneys raised by such special assessments shall be held as a special fund to pay such cost and expense of such purchase or condemnation. Such special assessments shall be assessed, levied and collected at the time and in the manner provided for the assessing, levying and collecting of the general fund or general taxes of such cities, villages and townships. § 4551.

PART VIII.

BOARD OF REVIEW.

793. Election of Board of Review.—At the annual township meeting held on the first Monday of April in the year eighteen hundred ninety-four, there shall be elected by ballot, on the regular township ticket, two taxpaying electors of the township, who shall be owners of land in said township, to serve as members of the board of review, one of whom shall be elected for one year and one for two years, and annually thereafter one member shall be elected for two years, who shall take the constitutional oath of office as other township officers. The supervisor and the two electors so elected shall constitute a board of review for such township. § 4022.

794. Vacancy in Board How Filled.—The township board may temporarily fill any vacancy which shall occur in the membership of said board of review, but no member of such township board shall be eligible to fill such vacancy. § 4022.

795. Quorum of Board.—A majority of said board of review shall constitute a quorum for the transaction of business, but a less number may adjourn from day to day, and a majority vote of those present shall decide all questions. § 4022.

796. To Review Assessment.—On the Tuesday next following the first Monday in June, the board of review of each township shall meet at the office of the supervisor; at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the said board shall proceed to examine and review the same, and during that day and the day following if necessary, said board of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review.—§ 4023.

CONSTRUED: Allegations in an answer to a petition filed under the tax law of 1889, that defendant's lands were assessed beyond their cash value, and that "said excessive assessment was fraudulent and void," is too general and insufficient to permit evidence of fraud. The specific acts which are claimed to constitute fraud must be set forth, and it should also be alleged whether the fraud was that of the supervisor or board of review.—Auditor General v. Stiles, 83 / 460.

An excessive assessment (valuation) of land is not sufficient evidence of corrupt and fraudulent conduct on the part of the assessor or board of review.—Id.

The provision of the tax law requiring the board of review of a township to meet upon certain specified days for the purpose of reviewing and correcting the assessment roll is mandatory.—Caledonia v. Rose, 94 / 216.

A taxpayer has the right to assume that the board of review will remain in session the full statutory time, and to arrange to be present on any day he may choose, and if, by reason of the failure of the board to perform this statutory duty, he is prevented from appearing and objecting to his assessment, the tax levied against him thereon is void.—Id.

The board of review is a tribunal provided by law, in which the taxpayer may appear to contest an unequal or excessive assessment; and his failure so to appear estops him from assailing the assessment afterwards; citing Bank v. St. Joseph, 46 / 526; Williams v. Saginaw, 51 / 120; Comstock v. Grand Rapids, 54 / 641; Lumber Co. v. Crystal Falls, 60 / 510.—Id.

The question whether an assessment is excessive or not is not for the courts to try, the board of review being the only tribunal having jurisdiction of that question, citing Williams v. Saginaw, 51 / 120.—Id.

797. Correction of Assessments and Endorsement of Roll.—Said board of review shall also meet at the office of the supervisor on the second Monday in June at nine o'clock in the forenoon, and continue in session during the day and the day following. Such board shall continue its sessions at least six hours each day, and at the request of any person whose property is assessed thereon or of his agent, and on sufficient cause being shown, shall correct the assessment as to such property, in such manner as in their judgment will make the valuation thereof relatively just and equal. To that end said board may examine on oath the person making such application, or any other person, touching the matter. Any member of said board may administer such oath. After said board shall complete the review of said roll, a majority of said board shall endorse thereon and sign a statement to the effect that the same is the assessment roll of said township for the year in which it has been prepared and approved by the board of review. Said statement may be in the following form, viz.:

"Assessment roll of the township of ....., for the year 19...., as approved by the board of review.

Dated.....

.....

.....

.....

Board of Review."

§ 4024.

When a board of review has once acted, and reduced an assessment, its action becomes final, and cannot be changed, if at all, without giving the party at whose instance it was done the benefit of a further hearing. The new increase is an excess of jurisdiction, and no valid action can rest on it against the party so injured.—Philips v. Townsend of New Buffalo, 64 / 683.

The action of the board in such a case is not required to be proven intentionally fraudulent, in order to authorize resistance to taxation founded on it.—Id. Where the board of review deliberately agree among themselves to leave untaxed the salt, lumber and logs in a township, and the assessor testifies that he intended to assess the property on his roll at only one-fourth of its cash value, the owner of a stock of hardware, in an action to recover the amount in which her assessment is excessive, need not make the usual proof of the actual value of her property, since it would be impossible to ferret out the legal from the illegal taxes.—Solomon v. Township of Oscoda, 77 / 365.

Public policy will not permit any tampering with an assessment roll after it is equalized and completed and certified as required by law. So held, where after the equalization of his assessment roll, and at the time of extending the taxes thereon, the supervisor added a number of descriptions of land to the roll, and increased the valuation of one description from $80 to $800, the addition amounting to about $3,500, which action is held fatal to the validity of the tax roll.—Weston v. Monroe, 84 / 341.

Where the board of review meets and acts upon the question of values at the time provided by law it is immaterial that the entry upon the roll of the values so fixed is not made until afterwards.—Auditor General v. Ayer, 1222 / 136.

798. Validity of Tax Roll.—Upon the completion of said roll and its endorsement in manner aforesaid, the same shall be conclusively presumed by all courts and tribunals to be valid, and shall not be set aside except for causes hereinafter mentioned. The omission of such endorsement shall not affect the validity of such roll. § 4025.

799. When Absent Members to be Notified to Attend.—If from any cause a quorum is not present at any meeting of the board of review, it is the duty of the supervisor, or, in his absence, any other member of the board present, to notify each absent member to attend at once, and it is the duty of the member so notified to attend without delay. § 4026.

800. When Board to Meet if Second Meeting is Not Held.—If from any cause the second meeting of such board of review herein provided for is not held at the time fixed therefor, then, and in that case it shall meet on the next Monday thereafter, and proceed in the same manner and with like powers as if such meeting had been held as hereinbefore provided. § 4026. See Sec. 796 of this Guide.

801. Record of Proceedings of Board.—The supervisor or clerk of said board of review shall keep a record of the proceedings of the board and of all the changes made in such assessment roll, and shall file the same with the township or city clerk with the statements made by persons assessed. § 4027.

802. Penalty for Assessing Property at Other than Cash Value.—If any supervisor or other assessing officer of any township or city wilfully assesses any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor, and on conviction thereof be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, at the discretion of the court. If any board whose duty it is to review the assessment of an assessing officer wilfully assesses property at more or less than its cash value, the members voting in favor of such action shall severally be guilty of a misdemeanor and on conviction be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, at the discretion of the court. § 4115.

OVER ASSESSMENT: Taxes may be set aside as illegal, where property has been fraudulently over-assessed, whether it be by over-valuation of such property, or by wilful over-assessment.—**Lingle v. Elmwood Twp., 142 / 194, 200.**

UNIFORM VALUE: An arrangement by a board of review that all lands owned by several taxpayers in the north half of the township shall be asseesed at a uniform value is invalid.—**Auditor General v. Ayer, 122 / 136.**

803. Compensation of Members of Board.—The members of the board of review shall be paid at the rate of three dollars per day for each day actually and necessarily devoted by them to the service of the township in the duties of their respective offices, to be verified by affidavit, whenever required by the township boards. § 2154. As Am. by Act 89 of 1917. See Sec. 282 of this Guide.

PART IX.

TOWNSHIP AND DISTRICT BOARDS OF HEALTH.

CHAPTER I.—General Provisions.
CHAPTER II.—Dangerous, Communicable Diseases.
CHAPTER III.—Tuberculosis.
CHAPTER IV.—Burying Grounds.
CHAPTER V.—Rabies Among Dogs.
CHAPTER VI.—Offensive Trades and Slaughter Houses.
CHAPTER VII.—Cremations and Removal of Dead Bodies.
CHAPTER VIII.—District Boards of Health.

CHAPTER I.

GENERAL PROVISIONS OF LAW RELATING TO BOARD OF HEALTH.

804. Who to Constitute the Board of Health, Etc.—In every township the township board constitutes the board of health. The supervisor shall be the president, and the township clerk shall be the clerk of said board. The clerk shall keep a record of the proceedings of the board in a book to be provided for that purpose at the expense of the township. § 5041.

805. When to Make Reports to the State Board of Health.—It is the duty of the health physician, and also of the clerk of the local board of health in each township and village in this State, at least once in each year, to report to the state board of health their proceedings, and such other facts required, on blanks, and in accordance with instructions received from said state board. They shall also make special reports whenever required to do so by the state board of health. § 4995.

806. Annual Meeting, Appointment of Health Officer, Etc.—Every board of health shall appoint and constantly have a health officer, who shall be a well educated physician, and act as the sanitary adviser and an executive officer of the board. In townships where it is not practicable to secure the services of a well educated and suitable physician, the board may appoint the supervisor or some other person as such health officer. The board of health shall establish his salary or other compensation, and shall regulate and audit all fees and charges of persons employed by them in the execution of the health laws and of their own regulations, except as hereinafter provided in Sec. 825 hereof with regard to dangerous communicable diseases. Within thirty days after the annual township meeting in each year, the board of health shall meet for the transaction of business, and shall appoint or re-appoint a health officer, and shall immediately cause to be transmitted to the secretary of the state board of health, at Lansing, the full name and postoffice address of such health officer, and a statement whether he is a physician, the supervisor, or some other person not a physician. A special meeting of the board may be called by the order of the president or of any two members of said board. § 5042. [See Form No. 35.]

807. **Board to Make Regulations Respecting Nuisances and Causes of Sickness.**—The board of health shall make such regulations and by-laws respecting nuisances, sources of filth and causes of sickness, within their respective townships, and on board of any vessels in their ports or harbors, as they shall judge necessary for the public health and safety, and if any person shall violate any such regulations or by-laws he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding the sum of one hundred dollars, or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. § 5043.

808. **To Make Regulations Respecting Articles Capable of Conveying Infection, Etc.**—The said board shall also make such regulations as they may deem necessary for the public health and safety, respecting any articles which are capable of containing or conveying any infection or contagion, or of creating any sickness, when such articles shall be brought into, or conveyed from their township, or into, or from any vessel; and if any person shall violate any such regulation, he shall forfeit a sum not exceeding one hundred dollars. § 5044.

809. **Board to Give Notice of Regulations Made by Them.**—Notice shall be given by the board of health of all regulations made by them, by publishing the same in some newspaper of the township, if there be one published therein, and if not, then by posting them up in five public places in such township; and such notice of said regulations shall be deemed legal notice to all persons. § 5047.

810. **Board Shall Remove or Destroy Nuisances.**—The board of health shall examine into all nuisances, sources of filth and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants within their township, or in any vessel within any harbor or port of such township; and the same shall destroy, remove, or prevent, as the case may require. § 5048. [See Form No. 36.]

811. **Nuisance on Private Property.**—Whenever any nuisance, source of filth, or cause of sickness, is found on private property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding one hundred dollars. § 5049. [See Form No. 36.]

CONSTRUED: It has always been held that declaring a thing a nuisance does not make it so, if not so in fact; and an officer, removing as a nuisance that which is innocent, cannot be justified.—Horn v. People, 26 / 226. Property cannot be destroyed for the abatement of a nuisance until its destruction is lawfully ascertained to be necessary therefor, and then only so far as is determined to be necessary.—Shepard v. People, 40 / 487.

812. **Expenses of Abating Nuisance to be Paid by Owner of Premises.**—If the owner or occupant does not comply with such order of the board of health, such board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner of such premises. If the owner of said premises shall refuse on demand of said board of health to pay such expenses so incurred, any sums so paid shall be assessed against such property and shall be collected and treated in the same manner as are taxes assessed under the general laws of the State. § 5050.

813. **When Court May Order Nuisance Removed.**—Whenever any person shall be convicted, on an indictment for a common nuisance that may

be injurious to the public health, the court may, in its discretion, order it to be removed or destroyed, at the expense of the defendant, under the direction of the board of health of the township where the nuisance is found; and the form of the warrant to the sheriff or other officer may be varied accordingly. § 5051. [See Form No. 36.]

CONSTRUED: Where an information for nuisance alleges that it arises from the use of things innocent in themselves, the case does not call for their destruction in order to effect an abatement, but for the discontinuance of the objectionable method of using them.—Messersmidt v. People, 46 / 437.

814. **Proceedings When Board is Denied Admission to Any Building, Etc.**—Whenever the board of health deems it necessary for the preservation of the lives or health of the inhabitants to enter any building or vessel in their township, for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and is refused such entry, any member of the board may make complaint, under oath, to any justice of the peace of his county, whether such justice be a member of such board or not, stating the facts of the case, so far as he has knowledge thereof. § 5052. [See Form No. 37.]

Such justice may thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by any two or more members of said board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and the same destroy, remove, or prevent, under the direction of such members of the board of health. § 5053. [See Forms No. 37 and 38.]

815. **Board May Permit Removal of Sick Person or Infected Articles.**—The board of health may grant permits for the removal of any nuisance, infected article, or sick person, within the limits of their township, when they shall think it safe and proper so to do.—§ 5054. [See Form No. 39.]

816. **When Board May Sell Real Estate.**—Any board of health of this State may sell and convey any real estate, the fee of which is vested in them. But no real estate shall be sold by virtue of this act which is or has been in actual use as a cemetery or burial ground, unless the same shall be sold by an order of the circuit court upon the petition of the board of health of the township in which the burial ground is situated. § 5094.

817. **Powers of Boards Relative to Water Closets.**—Boards of health in townships are empowered to make such rules and regulations in relation to the care and cleansing of privies and water closets within such townships as they may deem desirable for the preservation of the health of any of the inhabitants thereof, or such boards may declare any such privy or water closet a nuisance, and the abatement thereof may be by them ordered and enforced. § 5097.

Any violation of any rule or requirement of such board under this section shall be deemed to be a misdemeanor, and shall be punished by a fine not more than ten dollars or imprisonment in the county jail not more than ten days, or both such fine and imprisonment, in the discretion of the court. § 5098.

818. **Delivery of Dead Human Bodies to Medical Institutions.**—Any member of the board of health of any city, village or township, the com-

mon council of any city, board of trustees of any village, any board or officer having the direction, management, charge or control in whole or in part of any prison, workhouse, jail or lockup, founded or supported in whole or in part at public expense, having in his or their possession or control, the dead body of any person not claimed by any relative or legal representative, shall deliver such dead body or bodies within thirty-six hours after death, or after he or they shall become possessed thereof, to a licensed embalmer, who shall, after preparing the body for shipment, place it in a plain coffin and outer box plainly directed to the demonstrator of anatomy of the "University of Michigan, Ann Arbor, Michigan," and deliver the same together with a transit permit, as provided by the state board of health, to the express or railway company at the nearest railway station, excepting only the dead bodies of such persons as shall have died of smallpox, diphtheria or scarlet fever. In the county of Wayne the dead bodies hereinbefore described shall be sent in the same manner and under the same restrictions as those sent to the demonstrator of anatomy of the University of Michigan, either to the demonstrator of anatomy of the Detroit College of Medicine, or to the demonstrator of anatomy of the Detroit Homeopathic College. Such boards, common councils, officers or other persons making such shipment or delivery, shall as the case may be take the usual shipping receipt or a fully particularized receipt for such package and shall notify the consignee of such shipment by letter mailed on the day the package is so delivered to the express or railway company, or within the county of Wayne, delivered concurrently by messenger or otherwise with the delivery of such package, and shall also enclose in such letter a statement giving, as nearly as can be ascertained, the name, age, residence and cause of death of such deceased person, whose body has been shipped or is being delivered as aforesaid; and also a statement of the cost and expenses which have been incurred in the storage and preparation of the body for shipment, in the rental of the coffin and box, and in the delivery of the same to the transportation company; and upon the receipt of the package so shipped to him, the demonstrator of anatomy of the university of the State of Michigan shall immediately forward to such officer, board, council or institution or person or persons making such shipment or incurring such expenses the amount thereof, not exceeding in any case the sum of fifteen dollars, exclusive of the cost of transporting the body and the cost of returning the coffin and box to the consignor. The transportation charges for any corpse by any railway company or express company shall be the price of one first class passenger fare between the points of shipment, but in no case shall the charge be less than two dollars, and no railway company or express company shall require such corpse to be accompanied by a person. Upon the receipt of a package so delivered to him, the demonstrator of anatomy of the Detroit College of Medicine or of the Detroit Homeopathic College, as the case may be, shall immediately forward to such officer, board, council or institution or person or persons making such delivery or incurring such expenses, the amount thereof not exceeding in any case the sum of seven dollars. But such dead body shall not be shipped or delivered as aforesaid if it shall be requested in good faith for interment by any relative before the same shall have been delivered as aforesaid, and in case the dead body of any person so delivered or so shipped as aforesaid be subsequently claimed

or demanded of either of said demonstrators of anatomy, or of any other person or institution, into whose possession or under whose control it may have been placed by virtue of the provisions of the law, by any relative or legal representative of such deceased person for private interment, it shall be given up to such claimant, even after the same shall have been interred as hereinafter provided, after they shall have paid the actual expenses incurred and paid by the demonstrator of anatomy or by any person or institution into whose possession or under whose control it may have been placed by virtue of the provisions of this act. Such bodies shall be used only for the purposes hereinafter mentioned, and shall then in all cases be interred in some suitable place kept for that purpose and a correct record shall be kept of every such body; and all matters by which such body may be identified, coming to the knowledge of the person or officer at any time in charge of such bodies, shall be faithfully recorded at length in a book kept for that purpose, to the end that the same may at any time be traced and discovered by the friends and relatives of such deceased person. The institution, board, council, officer or person aforesaid, shall immediately after the death of such person notify, if possible, by telegraph, or otherwise by letter, one or more of the nearest known relatives of such deceased person of the death of such person: and in no other case shall the body of such deceased person be shipped or delivered as aforesaid until after the expiration of twenty-four hours from death. Every individual, officer or party violating any of the provisions of this section shall be deemed guilty of a misdemeanor. § 7751.

819. **Bodies to be Used for Advancement of Science.**—The bodies so shipped or delivered as aforesaid shall be used for the advancement of anatomical science, only, in the University of Michigan, the Detroit College of Medicine and the Detroit Homeopathic College. The said bodies shall be distributed to and among the same equitably and, as far as possible, in the order in which they are received, and the number assigned to each by the said demonstrator of anatomy shall be proportional to that of its students of anatomy in actual attendance. Either of the said demonstrators of anatomy upon the receipt of every body under and by virtue of the provisions of this act, shall cause the same to be embalmed or put in a state of preservation, and shall not permit the same to be delivered to any of said institutions for the purpose of dissection until the same shall have been in his possession at least ten days. It shall be the duty of the said demonstrator of anatomy of the University of Michigan and the said demonstrator of anatomy of the Detroit College of Medicine and the said demonstrator of anatomy of the Detroit Homeopathic College, upon the receipt of any body under the provisions of this act, to immediately notify either by mail or telegraph as he may deem best, the relatives of such deceased person, if known, of the receipt of such body and that said body will be preserved intact for the space of ten days, in which time the said relative will be entitled to said body for the purpose of interment, and shall pay such expenses, and the demonstrator of anatomy, in whose possession or under whose control the said body may be, shall deliver to such relative or such legal representative the said body, together with the said coffin and box enclosing the same: but in case said body shall not be requested by such relatives until after the same shall have been applied to the purposes intended, the remains

thereof together with the coffin and box aforesaid shall be delivered without charge. The University of Michigan, the Detroit College of Medicine and the Detroit Homeopathic College aforesaid, and each and every other medical institution, shall not receive into their possession any bodies procured in this State other than those provided for by the provisions of this act. Every individual or party violating the provisions of this section shall be deemed guilty of a misdemeanor. § 7752.

820. Bodies Not to be Sold or Shipped Out of State.—No such dead body shall be sold or delivered to any person to be taken out of the State, nor shall any such dead body be shipped to any person or place out of the State, with the exception of the provision for reclaimed bodies as aforesaid, or to be used within the State for any purpose, except for the prosecution of anatomical science. Any person violating any of the provisions of this act shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not less than one nor more than three months, or by both such fine and imprisonment in the discretion of the court. Any practicing physician or surgeon of this State, or any medical student under the authority of such physician or surgeon, may have in his possession human dead bodies or the parts thereof, lawfully obtained, for the purposes of anatomical inquiry or dissection. § 7752.

821. Adulterated Candies and Confectioneries.—It is the duty of the local health officer or local board of health having jurisdiction thereof to investigate without unnecessary delay all complaints that may be properly brought before them and containing facts as supported by affidavit of the parties complaining of the adulteration or sale of adulterated candies or confectioneries, and if after investigation by such officer or board, reasonable cause for action is found to exist, then such officer or board shall at once give notice to the prosecuting attorney of the county in which such complaint is made, and make or cause to be made, before a proper officer, a formal complaint in writing and duly verified, and thereupon said prosecuting attorney shall immediately commence proceedings against the person or persons so offending.—§ 15128.

For an act to prevent the adulteration of candies and to regulate the sale thereof, see § § 6532-34, C. L. of 1915.

822. Water for Domestic Uses May be Analyzed.—In any case where any township in this State is supplied with water for domestic uses by any individual, company or corporation, city or village, or where there is within such township any water in swales, wells, rivers or other places, which might be the cause of disease or epidemic, a sample of such water may be sent to the University of Michigan for analysis by the supervisor of any such township, upon the resolution of the township board of such township, for that purpose duly passed. § 5146.

Upon receipt of such sample, the regents of the University of Michigan shall cause a correct analysis of such sample of water to be made, and a correct statement of the properties contained therein, with a further statement whether or not such sample contains any substance deleterious to health, and return such analysis, together with the statement aforesaid to the person so sending the same, free of charge, except the actual cost of materials and animals used in making such analysis and experiment. § 5147.

It is the duty of the board of regents of the University of Michigan to cause a record to be kept of every sample of water received under and by virtue of this statute, and in no case shall a second analysis be required of the same water, within one year, except in case of the breaking out of some disease among the consumers of such water, and then only upon the certificate of at least two physicians engaged in active practice in that community that, in their opinion, such disease arises from the use of said water. § 5148.

823. **Owner to Report to Board Diseases Among Live Stock.**—It is the duty of any person who discovers, suspects, or has reason to believe that any domestic animal belonging to him or in his charge, or that may come under his observation, belonging to other parties, is affected with any disease, whether it be a contagious or infectious disease, to immediately report such fact, belief, or suspicion to the live stock sanitary commission, or a member thereof, or to the local board of health or some member thereof. § 7311.

824. **Board to Investigate Contagious Diseases Among Animals.**—It is hereby made the duty of all local boards of health, to whom cases of contagious or infectious diseases are reported, to immediately investigate the same, either in person by some member or members of the board, or by the employment of a competent and skilled veterinarian; and should such investigation show a reasonable probability that a domestic animal is affected with a contagious or infectious disease of a malignant character, the local board of health shall immediately establish such temporary quarantine as may be necessary to prevent the spread of the disease, and report all action taken to the commission or to some member thereof; and the acts of local boards of health establishing temporary quarantine shall have the same force and effect as though established by the commission itself, until such time as the commission may take charge of the case or cases, and relieve the local board of health. All expenses incurred by local boards of health in carrying out the provisions of this act shall be paid in like manner as are other expenses incurred by said boards in the discharge of other official duties. § 7312.

CHAPTER II.

DANGEROUS COMMUNICABLE DISEASES.

825. **When and How Board May Provide Against Spread of Dangerous Communicable Diseases.**—When any person coming from outside the county or residing in any township, city or village within this State shall be infected, or shall lately before have been infected with a dangerous communicable disease, the board of health of the township, city or village where such person may be shall make effectual provision in the manner in which it shall judge best for the safety of the inhabitants and it may remove such sick or infected person to a separate house if it can be done without danger to his health, and shall thereupon report such case to the supervisor of the ward, or township, in which such infected person shall be, which supervisor shall provide nurses and other assistance and necessaries which shall be at the charge of the person himself, his parents or other persons who may be liable for his support, if able: Provided, If such person, his parents or other person who may be liable

for his support, be not able to pay for such assistance and necessaries, the supervisor shall keep an itemized and separate statement of expenses incurred for each and every person cared for under this section and shall render such statement to the board of supervisors of the county by filing the same with the county clerk. The said board of supervisors shall, as soon as may be, proceed to audit the said bill, and if found that the expenses were necessarily incurred, the services actually and necessarily performed and the amounts claimed for such expenses and services are severally just and reasonable under the circumstances, the said board of supervisors shall allow the same, or such parts thereof as the majority of the members-elect of said board shall deem just, and provide for their immediate payment by the said county; and in auditing such accounts said several boards of supervisors shall have full power to examine into the merits of all claims presented to them in accordance with the provisions herein contained, and may subpoena witnesses and take any other measures necessary to arrive at the truth of the same; and the said board of supervisors is hereby empowered, if necessary, to issue orders or borrow money on the faith and credit of the county to pay all such necessary bills and expenses and to include the same in the next appropriation of money to be raised by taxation in said county: Provided, The board of supervisors or county board of auditors shall fix the maximum fee and mileage for medical attendance upon contagious diseases chargeable to the county and shall authorize the superintendents of the poor, upon the application of any board of health of a township, city or village, to contract with a physician or physicians to attend contagious diseases. § 5055. As Am. by Act 77 of 1917. See also Act 49 of 1911, being § 5011, C. L. of 1915.

The authority of a township board of health to guard against smallpox extends to making contracts for the nursing of patients and to destroying infected clothing. And when they have allowed the accounts for such services rendered and property destroyed, the board of supervisors must pass such accounts, and can be compelled by mandamus to do so; they cannot refuse on the ground that the patients were themselves able to pay, or that sundry taxpayers considered the charges extortionate.—Elliott v. Supervisors, 58 / 452.

In providing that what is done shall be at the charge of individuals, it is not intended to exempt the public from immediate liability.—Rae v. Flint, 51 / 528; Elliott v. Supervisors, 58 / 453.

Where accounts for supplies furnished and services rendered to indigent persons afflicted with contagious diseases have been allowed by a local board of health, as claims against the county, the board of supervisors of such county cannot refuse to pay the same on the ground that such persons were residents of another county.—Zimmerman v. Supervisors, 133 / 494.

The health board has large discretionary powers, made necessary by the fact that it is an emergency board.—Cedar Creek Twp. v. Supervisors, 135 / 127.

Where the members of a board of health, allowed itemized bills, at a regular meeting, for services of a physician, the board of supervisors could not refuse to pay the bills on the ground that the physician was not employed at a meeting of the board of health.—Cedar Creek Twp. v. Supervisors, 135 / 124; Pierce v. Supervisors, 136 / 423; Sturge v. Supervisors, 136 / 425.

826. When Infected Person Cannot Safely Be Moved.—If any such infected person cannot be removed without danger to his health, the board of health shall make provision for him as directed in the preceding section, in the house in which he may be, and in such case they may cause the persons in the neighborhood to be removed, and may take such other measures as they may deem necessary for the safety of the inhabitants. § 5056.

827. When and How Board May Restrain Travelers from Infected districts.—The board of health of any township near to, or bordering upon either of the neighboring States, may appoint by writing under theirs hands, suitable persons to attend any places by which travelers

may pass, from infected places in other States; and the persons so appointed may examine such passengers as they may suspect of bringing with them any infection which may be dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by the board of health of the township to which such persons may come; and any person coming from such infected place, who shall, without license as aforesaid, travel within this State, unless it be to travel by the most direct way to the State from whence he came, after he shall be cautioned to depart by the persons appointed as aforesaid, shall forfeit a sum not exceeding one hundred dollars. § 5057. [See Form No. 40.]

828. **Two Justices May Order Sheriff or Constable to Remove and Provide for Infected Person.**—Any two justices of the peace may, if need be, make out a warrant under their hands, directed to the sheriff, or any constable of the county, requiring him, under the direction of the board of health, to remove any person infected with contagious sickness, or to take possession of convenient houses and lodgings, and to provide nurses, attendants, and other necessaries, for the accommodation, safety, and relief of the sick. § 5058. [See Form No. 41.]

829. **How Infected Baggage, Clothing, Etc., May be Secured and Guarded.**—Whenever, on application of the board of health, it is made to appear to any justice of the peace that there is just cause to suspect that any baggage, clothing, or goods of any kind found within the township, are infected with any disease which may be dangerous to the public health, such justice of the peace shall, by warrant under his hand, directed to the sheriff, or any constable of the county, require him to take with him as many men as the said justice deems necessary to secure such baggage, clothing, or other goods, and to post said men as a guard over the house, or place where such baggage, clothing or other goods is lodged, which guard shall take effectual care to prevent any person removing, or coming near to such baggage, clothing, or other goods, until due inquiry be made into the circumstances thereof. § 5059. [See Forms Nos. 42 and 43.]

830. **Impressing Houses, Etc., for Keeping Infected Goods.**—The said justice may also, by the same warrant, if it appears to him necessary, require the said officer, under the direction of the board of health, to impress and take up convenient houses or stores, for the safe keeping of such baggage, clothing, or other goods; and the board of health may cause them to be removed to such houses or stores, or to be otherwise detained until they shall, in the opinion of said board of health, be freed from infection. § 5060.

831. **Powers of Officer Executing Warrant.**—Such officer, in the execution of such warrant, shall, if need be, break open any house, shop, or any other place mentioned in said warrant, where such baggage, clothing, or other goods shall be; and he may require such aid as shall be necessary to effect the execution of the warrant; and all persons shall, at the command of any such officer, under a penalty not exceeding ten dollars, assist in the execution of the warrant, if able to do so. § 5061.

832. **Charges to be Paid by Owner.**—The charges of securing such baggage, clothing, or other goods, and of transporting and purifying the same, shall be paid by the owner or owners thereof, at such rates and prices as determined by the board of health. § 5062.

833. Compensation for Houses, Lodgings, Nurses, Etc.—Whenever the sheriff or other officer shall take possession of any houses, stores, lodgings, or other necessaries, or shall employ any nurse or attendants, as provided in this chapter (Chap. 95, C. L., 1915), the several parties interested shall be entitled to a just compensation therefor, to be paid by the county in which such person or property shall have been so employed or taken possession of. § 5063. See Secs. 825 and 829 of this Guide.

834. Removal from Jail of Person Infected with Dangerous Disease.—Whenever any person confined in any common jail shall be attacked with any disease, which, in the opinion of the physician of the board of health, or of such other physicians as they may consult, shall be considered dangerous to the safety and health of the other prisoners, or of the inhabitants of the township, the board of health shall, by their order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept, so as to prevent his escape, until their further orders; and if such prisoner recovers from the disease, he shall be returned to such jail. § 5064.

If the person so removed shall have been committed by order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the presiding member of said board of health, shall be returned by him, with the doings thereon, into the office of the clerk of the circuit court for the county; and no prisoner, removed as aforesaid, shall be considered as thereby having committed an escape. § 5065.

835. Township Quarantine Ground.—Any township may establish a quarantine ground in any suitable place, either within or without its own limits. But if such place shall be without its limits, the assent of the township within whose limits it may be established shall be first obtained therefor. § 5067.

836. Quarantine Ground by Two or More Townships.—Any two or more townships may, at their joint expense, establish a quarantine ground for their joint use, either within or without their own limits. But if such place shall be without their limits, they shall first obtain the assent of the township within whose limits the same may be. § 5058.

837. Quarantine Regulations Respecting Vessels.—The board of health in each township in this State bordering upon Lake Michigan, Lake Superior, Lake Huron, Lake St. Clair, or Lake Erie, or upon any of the principal rivers or straits connecting together any of the said lakes, or bordering upon any navigable waters uniting with any of the said lakes, rivers, or straits, may from time to time establish the quarantine to be performed by all vessels arriving within the limits of such townships, and may make such quarantine regulations as they shall judge necessary for the health and safety of the inhabitants. § 5069. [See Form No. 44.]

The quarantine regulations so established shall extend to all persons, and all goods and effects, arriving in such vessels, and to all persons who may visit or go on board of the same. § 5070.

The said quarantine, regulations, after notice shall have been given in the manner before provided in Sec. 570, shall be observed and complied with by all persons; and any person who shall violate any such regulations shall forfeit a sum not less than five dollars and not more than five hundred dollars. § 5071.

The board of health in each township bordering upon any of the lakes, rivers, straits, or other navigable waters hereinbefore mentioned, may at all times cause any vessel arriving within the limits of the township, when such vessel or cargo thereof shall, in their opinion, be foul or infected, so as to endanger the public health, to be removed to the quarantine ground, and to be thoroughly purified, at the expense of the owners, consignees, or persons in possession of the same; and they may also cause all persons arriving in or going on board of such infected vessel, or handling such infected cargo, to be removed to any hospital under the care of the said board of health, there to remain under their orders. § 5072. [See Form No. 44.]

838. **Penalty for Refusing to Answer Questions Relating to Infection.** —If any master, seaman, or passenger, belonging to any vessel, on board of which any infection may then be, or may have lately been, or which may have been at, or which may have come from any port or place where any infectious disease prevails, that may endanger the public health, refuses to answer on oath, to be administered by any member of such board, such questions as may be asked him, relating to such infection or disease, by any member of the board of health of the township to which such vessel may come, such master, seaman, or passenger, so refusing, shall forfeit a sum not exceeding two hundred dollars; and in case he shall not pay such sum, he shall suffer six months' imprisonment. § 5073.

839. **Expenses of Quarantine to be Paid by Owner of Vessel or Goods.** —All expenses incurred on account of any person, vessel or goods, under any quarantine regulations, shall be paid by such persons, or by the owner of such vessel or goods respectively. § 5074.

840. **Hospitals for Persons Having Smallpox, Etc.**—The inhabitants of any township may establish within their township, and be constantly provided with, one or more hospitals for the reception of persons having the smallpox, or other disease which may be dangerous to the public health. §5075.

All such hospitals shall be subject to the orders and regulations of the board of health, or a committee appoined by such board for that purpose; but no such hospital shall be established within one hundred rods of any inhabited dwelling house situated in an adjoining township, without the consent of such adjoining township. § 5076.

When any hospital is so established, the physician attending the same, the persons inoculated or sick therein, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all furniture and other articles as shall be used or brought there, shall be subject to such regulations as shall be made by the board of health, or of the committee appointed for that purpose. § 5078.

When the smallpox, or any other disease dangerous to the public health, shall break out in any township, the board of health shall immediately provide such hospital, or place of reception for the sick and infected, as they shall judge best for their accommodation, and the safety of the inhabitants; and such hospitals and places of reception shall be subject to the regulations of the board of health, in the same manner as hereinbefore provided for established hospitals. § 5079.

841. **Penalty for Inoculating with Smallpox, Except at Hospitals.**—If any person shall inoculate any other person, or inoculate himself, or

suffer himself to be inoculated with the smallpox, unless at some hospital licensed and authorized by law, he shall, for each offense, forfeit a sum not exceeding two hundred dollars. § 5077.

842. Board to Remove Sick or Infected Persons to Hospitals.—The board of health shall cause such sick or infected persons to be removed to such hospitals or places of reception, unless the condition of the sick person be such as not to admit of removal without danger of life; in which case the house or place where the sick shall remain, shall be considered as a hospital to every purpose before mentioned, and all persons residing in, or in any way concerned with the same, shall be subject to the regulations of the board of health, as before provided. § 5080. See Sec. 840 of this Guide.

843. Preventing Spread of Dangerous Diseases.—When the smallpox, or any other disease dangerous to the public health, is found to exist in any township, the board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travelers, by such means as in their judgment shall be most effectual for the common safety. § 5081.

844. Penalty for Violating Hospital Regulations.—If any physician or other person in any of the hospitals or places of reception before mentioned, or who shall attend, approach, or be concerned with the same, shall violate any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, the person so offending shall, for each offense, forfeit a sum not less than ten nor more than one hundred dollars. § 5082.

845. Who to Give Notice of Disease, Penalty for Neglect, Etc.—Whenever any householder, hotel-keeper, keeper of a boarding house or tenant, shall know, or shall be informed by a physician, or shall have reason to believe that any person in his family, hotel, boarding house or premises is taken sick with smallpox, cholera, diphtheria, scarlet fever, or any other disease dangerous to the public health, he small immediately give notice in writing thereof to the health officer, the president, or the clerk of the board of health of the township or village in which he resides. Said notice shall state the name of the person sick, the name of the disease, if known, the name of the householder, hotel-keeper, keeper of boarding house or tenant giving the notice, and shall, by street and number, or otherwise, sufficiently designate the house in which he resides or the room in which the sick person may be; and if he refuses or wilfully neglects immediately to give such notice, he shall be deemed guilty of a misdemeanor, and upon conviction thereof he shall be punished by a fine of not exceeding one hundred dollars and costs of prosecution; or, in default of payment thereof, by imprisonment not exceeding ninety days in the county jail, in the discretion of the court. But such fine or imprisonment shall not be enforced, if a physician in attendance has given to the health officer or other officer hereinbefore mentioned an immediate notice of said sick person and true name of the disease, in accordance with the requirements of this section. § 5083. [See Form No. 45.]

NOTE: For other diseases classed as dangerous by state board of health, see form No. 59.

846. Duties of Physician to Give Notice of Dangerous Diseases, Penalty for Neglect, Etc.—Whenever any physician shall know that any

person whom he is called to visit, or who is brought to him for examination, is infected with smallpox, cholera, diphtheria, scarlet fever, or any other disease dangerous to the public health, he small immediately give notice thereof to the health officer of the township, city or village in which the sick person may be; and to the householder, hotel-keeper, keeper of a boarding house, or tenant within whose house or rooms the sick person may be. The notice to the officer of the board of health shall state the name of the disease, the name, age, and sex of the person sick; also the name of the physician giving the notice; and shall by street and number, or otherwise, sufficiently designate the house or room in which said sick person may be. And every physician and person acting as a physician, who refuses or neglects immediately to give such notice, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days in default of the payment of such fine: Provided, That this penalty shall not be enforced against a physician, if another physician in attendance has given to the health officer, or other officer, hereinbefore mentioned, an immediate notice of said sick person, and the true name of the disease, in accordance with the requirements of this section. § 5084. [See Form No. 45.]

For an act providing for the reporting of occupational diseases by physicians, see § § 5166-68, C. L. of 1915.

847. Compensation for Giving Notice.—For each complete notice in writing to an officer of the board of health, in full compliance with the preceding section, requiring from physicians, or other person, notices of diseases dangerous to the public health, the physician who gave the notice shall be entitled, on duly certifying that each notice was correct, and when the bill has been duly audited by the board of health, to receive from the township, city or village, in which the notice was given, the sum of ten cents. § 5085.

848. Inoculation with Cowpox, Under the Direction of Board.—Every township may, at any meeting, make suitable provision for the inoculation of the inhabitants thereof with the cowpox, under the direction of the board of health or the health officer of the township, and they shall raise all necessary sums of money to defray the expenses of such inoculation, in the same manner that other township charges are defrayed. § 5086.

849. Powers and Duties of Health Officer.—Whenever the health officer of any township in this State shall receive reliable notice or shall otherwise have good reason to believe that there is within the township of which he is the health officer, a case of smallpox, diphtheria, scarlet fever, or other communicable disease dangerous to the public health, it shall be the duty of said health officer, unless he is or shall have been instructed by the board of health, of which he is an executive officer, to do otherwise, immediately to investigate the subject, and in behalf of the board of health, to order the prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating the disease to other persons; to order the prompt vaccination or isolation of persons who have been exposed to smallpox; to see that no person suffers for lack of nurses or other necessaries because of isola-

tion for the public good; to give public notice of infected places by placard on the premises, and otherwise if necessary; to promptly notify teachers or superintendents of schools concerning families in which are contagious diseases; to supervise funerals of persons dead from scarlet fever, diphtheria, smallpox, or other communicable disease which endangers the public health; to disinfect rooms, clothing, and premises, and all articles likely to be infected, before allowing their use by persons other than those in isolation; to keep the president of his own board of health, and the secretary of the state board of health, constantly informed respecting every outbreak of a disease dangerous to the public health, and of the facts so far as the same shall come to his knowledge, respecting sources of danger of any such diseased person or infected article being brought into or taken out of the township of which he is the health officer. § 5091.

In the absence of regulations conflicting therewith, made and published by the local board of health, and still remaining in force, the foregoing provisions shall have the force of regulations made and published by the local board of health; and whoever shall knowingly violate the above provisions, or the orders of the health officer made in accordance therewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof be punished by a fine not exceeding one hundred dollars, and the costs of prosecution, or in default of payment thereof, by imprisonment not exceeding ninety days in the county jail, in the discretion of the court. § 5092.

In the fulfillment of the requirements of this act, the health officer, unless other provision shall have been made in accordance with law, shall be entitled to receive from the township of which he is health officer, compensation at the rate of not less than two dollars per day. But this section shall not be construed to conflict with any action by the local board of health, under Sec. 806. § 5093.

The board of health of defendant township met to take action looking towards the suppression of scarlet fever, and to prevent its further spread, and among the resolutions voted by the board was one authorizing its health officer to compel persons having the fever, or living in the house where it was, to remain at home until the danger of communicating the infection had passed, and "to provide for the wants of such persons as long as it is necessary for the public safety." Held, that under this resolution the health officer had authority to employ a physician to attend the sick, and the physician was entitled to recover for professional services thus rendered.—Wilkinson v. Township of Long Rapids, 74 / 63.

In such a case the physician's contract was with the township, and his action was properly brought against it.—Id.

The fact that plaintiff presented his account to the township board, who audited and allowed it in part, and issued an order to the plaintiff for the amount allowed, which he received and retained, does not preclude him from suing for the balance of his services, when he does not accept such order in full payment.—Id.

850. Board Authorized to Offer Vaccination.—The board of health of each township may, at any time, direct its health officer or health physician to offer vaccination with bovine vaccine virus to every child not previously vaccinated, and to all other persons who have not been vaccinated within the preceding five years, without cost to the person vaccinated, but at the expense of such township. § 5096.

851. Restrictions to Prevent Introduction of Dangerous Communicable Diseases.—No person sick with cholera, smallpox, diphtheria, scarlet fever or any other communicable disease dangerous to the public health, and no article which has been infected or is liable to propagate or convey any such disease, shall come or be brought into any township, city or village in Michigan, without the special permit of the board of health or

of the health officer of said township, city, or village, and then only under the supervision of the health officer of said township, city or village. § 5142.

Whoever shall violate the provisions of the foregoing section, or the order of the health officer made in pursuance thereof, shall, on conviction, be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both said fine and imprisonment. § 5143.

CHAPTER III.

TUBERCULOSIS.

852. Report of Tuberculosis by Physicians and Others.—Tuberculosis is hereby declared to be an infectious and communicable disease. It is the duty of every physician in the State to report in writing on a form to be furnished as hereinafter provided, the name, nativity, age, sex, color, occupation, place where last employed if known, and address, of every person known by said physician to have tuberculosis, to the health officer of the township, city or village in which said person resides, within twenty-four hours after such fact comes to the knowledge of said physician. It is also the duty of the chief officer having charge for the time being of any hospital, dispensary, asylum or other similar private or public institution in the State to report in like manner the name, nativity, age, sex, color, occupation, place where last employed if known, and previous address of every patient having tuberculosis who comes into his care or under his observation, within twenty-four hours thereafter. § 5099.

Blank forms for the making of the reports above required are furnished by the state board of health. For each complete report the physician reporting shall be allowed fifty cents. See § 5100.

853. Examination of Sputum.—It is the duty of every health officer of a township, when so requested by any physician or by authorities of any hospital or dispensary, to make or cause to be made a microscopical examination of the sputum or other bodily secretion or discharge forwarded to him as that of a person having symptoms of tuberculosis, which shall be forwarded to such officer in a package specified by the state board of health, accompanied by a blank giving name, nativity, age, sex, color, occupation, place where last employed if known, and address of the person whose sputum it is. It is the duty of said health officer promptly to make a report of the results of such examination free of charge to the physician or person upon whose application the same is made. But the examinations provided for in this section shall be made, on request of local health officers, by the state board of health. § 5101.

NOTE: As to what the report shall contain, see § 5100, C. L. of 1915.

854. Protection of Records.—It is the duty of every health officer of a township, to cause all reports made in accordance with the provisions of the first section of this act, and also all results of examinations showing the presence of the bacilli of tuberculosis made in accordance with the provisions of the third section of this act, to be recorded in a register to be furnished by the state board of health, of which he shall be the cus-

todian, and a copy of which he shall transmit quarterly to the state board of health. Such register shall not be open to inspection by any person other than the health authorities of the State and of the said township, and said health authorities shall not permit any such report or record to be divulged so as to disclose the identity of the person to whom it relates, except as may be necessary to carry into effect the provisions of this act. § 5102.

855. Disinfection of Premises.—In case of the vacating of any apartment or premises by the death or removal therefrom of a person having open tuberculosis, it is the duty of the attending physician, or if there be no such physician or if such physician be absent, of the owner, lessee, occupant or other person having charge of the said apartments or premises, if he knows or has been notified that such deceased person or persons who have been removed therefrom had open tuberculosis, to notify the health officer of said township, of said death or removal within twenty-four hours thereafter, and such apartments or premises so vacated shall not again be occupied until duly disinfected, cleansed or renovated by the local board of health, in accordance with the methods endorsed and recommended by the state board of health. § 5103.

When so notified, the local health officer or one of his assistants or deputies shall within twenty-four hours thereafter visit said apartments or premises and shall order and direct that, except for purposes of cleansing or disinfection, no infected article shall be removed therefrom until properly and suitably cleansed or disinfected; and said health officer shall determine the manner in which such apartments or premises shall be disinfected, cleansed or renovated in order that they may be rendered safe and suitable for occupancy. If the health authorities determine that disinfection is sufficient to render them safe and suitable for occupancy, such apartments or premises, together with all infected articles therein, shall immediately be disinfected by the health authorities at public expense. Should the health authorities determine that such apartments or premises are in need of thorough cleansing and renovation, a notice in writing to this effect shall be served upon the owner or agent of said apartments or premises, and said owner or agent shall thereupon proceed to the cleansing or renovating of such apartments or premises in accordance with the instruction of the health authorities, and such cleansing and renovation shall be done at the expense of the said owner or agent. § 5104.

856. Prohibiting Occupancy of Premises—In case the orders or directions of the local health officer requiring the disinfection, cleansing or renovation of any apartments or premises or any articles therein as hereinbefore provided, shall not be complied with within forty-eight hours after such orders or directions have been given, the health officer may cause a placard in words and form substantially as follows to be placed upon the door of the infected apartments or premises: "Tuberculosis is a communicable disease. These apartments have been occupied by a consumptive and may be infected. They must not be occupied until the order of the health officer directing their disinfection or renovation has been complied with. This notice must not be removed under penalty of the law except by the health officer or other duly authorized official." § 5105.

857. **Prohibiting Carelessness of Person Having Tuberculosis.**—Any person having tuberculosis who shall dispose of his sputum, saliva or other bodily secretion or excretion so as to cause offense or danger to any person or persons occupying the same room or apartment, house, part of a house or premises, shall, on complaint of any person or persons subjected to such offense or danger, be deemed guilty of a nuisance and any person subjected to such a nuisance may make complaint in person or writing to the health officer of any township where the nuisance complained of is committed. It is the duty of the local health officer receiving such complaint to investigate, and if it appears that the nuisance complained of is such as to cause offense or danger to any person occupying the same room, apartment, house, part of a house or premises, he shall serve a notice upon the person so complained of, reciting the alleged cause of offense or danger and requiring him to dispose of his sputum, saliva or other bodily secretion or excretion in such a manner as to remove all reasonable cause of offense or danger. Any person failing or refusing to comply with orders or regulations of the local health officer of any township requiring him to cease to commit such nuisance, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one nor more than ten dollars. § 5106.

858. **Protection of Patient's Family.**—It is the duty of a physician attending a patient having tuberculosis to take all proper precautions and to give proper instructions to provide for the safety of all individuals occupying the same house or apartment, and if no physician be attending such patient this duty shall devolve upon the local health officer, and all duties imposed upon physicians by any section of this act shall be performed by the local health officer in all cases of tuberculosis not attended by a physician. § 5107.

859. **Circular of Information.**—It is the duty of every local health officer to transmit to every physician reporting any case of tuberculosis, or to the person reported as suffering from this disease, provided the latter has no attending physician, a circular of information provided by the state board of health. This circular of information shall inform the consumptive of the precautions necessary to avoid transmitting the disease to others. § 5108.

860. **Reporting Recovery of Patient.**—Upon the recovery of any person having tuberculosis, it is the duty of the attending physician to make a report of this fact to the local health officer, who shall record the same in the records of his office, and shall relieve said person from further liability to any requirements imposed by this act. § 5110.

861. **Reporting Occupation of Diseased Persons.**—In addition to the requirements of the reports hereinbefore provided, such reports shall comprehend the occupation at the time disease was contracted and the date thereof, as near as can be, the time thereafter continued at such occupation and all subsequent occupations and term of each to the time of the death or recovery of any person having tuberculosis, and it shall be the duty of every health officer of township or village or city to cause all reports to be made in accordance with Sec. 852 and this section, and record copy transmitted as required by Sec. 854. The names of the persons so diseased shall not be published. § 5111.

862. General Penalty.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished, except as herein otherwise provided, by a fine of not less than five dollars, nor more than fifty dollars. § 5112.

CHAPTER IV.

BURYING GROUNDS.

863. Duties of Board Relating to Burying Ground.—The board of health shall make all regulations which they may deem necessary for the interment of the dead, and respecting burying grounds, for their township; and it is the duty of said board to purchase in each surveyed township so much land for burying grounds as is necessary for burying the dead of such township, provided suitable grounds therefor can be found and procured within the township, and if not, they shall then provide such grounds in the nearest adjoining township where such suitable grounds can be procured. § 5045.

The board of health of the township for which such burying ground shall be procured, and their successors in office, shall hold the fee of such land in trust for such township; and they shall keep the same, or so much thereof as shall be necessary, surrounded with a good and substantial fence; the expense of the purchase of such lands, and of fencing and regulating the same, to be certified to the town board by the board of health, and by the town board provided for as a part of the contingent expenses of the township. The board of health may, whenever they think it desirable, sell and convey single or family burial lots in said township burying grounds to such person or persons as may desire to procure the same, and apply the proceeds thereof towards the purchase or improvement of said grounds, certifying the amount of all such sales and expenditures to the township board, as above provided. But before said board of health shall sell or offer to sell any lot or lots as above provided, they shall cause said burying ground to be laid out in such form as they may choose, and cause two maps thereof to be made, which maps shall accurately describe the lands belonging to such burying grounds, its boundaries and location, with the lots or subdivisions named or numbered thereon, and also their size, situation and extent, with the width, extent, and location of all the streets, alleys, or walks in such burying ground, which maps shall be prepared under the supervision and direction of the health officer and clerk of said board of health, and certified by them to be a correct map of the said burying ground. One of said maps shall be filed with the clerk of said board of health and the other with the register of deeds of the county in which such burying ground is situated. § 5046.

POWERS OF BOARD: The court of chancery has an undoubted jurisdiction to enjoin the action of township boards of health in establishing burial places, should they proceed to exercise it illegally or improperly to the injury of others. But these boards have large discretionary powers, the exercise of which will not be interfered with until a clear case is made out. It must be intended until the contrary is shown that they are acting in good faith and in the line of their duty.—Upjohn v. Richland Twp., 46 / 542.

864. Complaint Against Private Cemetery.—Whenever complaint is made in writing to the board of health of any organized township in this State, by ten or more residents of such township, setting forth the fact

that any private cemetery, within the bounds of said township, should be removed, for the reason that such cemetery has become commons, or has become neglected or abandoned by its owner or owners, or has become a public nuisance, or impedes the growth of any city or village in said township, or whenever such cemetery endangers the health of the people living in the immediate vicinity thereof, it becomes the duty of the said township board of health to forthwith institute proceedings to vacate said cemetery in the manner hereinafter provided. The circuit court in chancery, of the county in which such cemetery is located, is hereby authorized to vacate the same, or any part thereof, on petition made to such court as herein provided. § 2163.

865. Petition to Court of Chancery.—Said petition shall be made by the board of health by an agent or attorney appointed for that purpose, who shall file a petition signed and sworn to by him, in the office of the register of said court for the proper county, which petition shall set forth his authority as attorney or agent, the particular reasons for making and filing such petition, and a distinct description of the premises on which such cemetery is located, which petition shall be filed, as aforesaid, thirty days previous to the first day of the term for which such petition shall be noticed for hearing. Notice of the pendency and hearing of such petition shall be given for the same space of time, by publishing the same in a newspaper published in the proper county once in each week for four successive weeks prior to the first day of the term when such case is noticed for hearing. Should said board of health neglect or refuse to appoint such attorney or agent within thirty days after the complaint in writing shall have been filed with said board, then any freeholder resident of said township may file said petition and proceed in the same manner as though regularly appointed as such agent or attorney. Such freeholder may be required upon the order of said court to furnish security for costs should said petition be denied. § 2164.

866. Hearing of Petition.—The hearing on such petition may be continued from term to term, in the discretion of the court, without further notice. All testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county. Under the discretion of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person or persons to be affected by such proceedings, and all questions touching the compensation to be paid by the person or persons to whom said premises or any part thereof shall be sold, after the same shall have been vacated as such cemetery, and all issues of fact may be tried by a jury, or three commissioners, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury or commissioners to determine the compensation to be paid to or by any persons as aforesaid, the proceedings upon such reference shall, so far as practicable, be like those had in cases where a jury is impaneled or commissioners are selected, to ascertain and determine the necessity of taking lands, franchises, and other property for the construction of railroads, and to appraise the damages and compensation to be allowed therefor. If, upon the hearing, such petitioner shall produce satisfactory evidence to the court that the

notice required by this act has been given, and that such cemetery should be vacated in whole or in part, as a place of burial, for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial. A copy of such order, certified by the register of such court under his seal, shall be recorded by the petitioners in the office of the register of deeds of the proper county. § 2165.

867. Removal of Dead Bodies.—When any cemetery shall be vacated as provided in this act, the said township board of health shall cause all the dead bodies and remains buried in said cemetery to be reinterred in the cemetery of such township, if they have one, and, if not, then in some suitable cemetery in an adjoining township, in a prudent, careful and respectful manner, and shall cause to be removed and again erected over the proper remains, all permanent fences around graves and lots, all tombstones and monuments, with as little injury as the case will admit. Should the cemetery vacated belong to any religious society or church and there be another suitable cemetery belonging to the same church or denominational society within said township or an adjoining township, then said removal may be made to such cemetery instead of to the township cemetery. No removal of said bodies and remains shall be made during the months of June, July, August or September, excepting in the upper peninsula. Such removal and cost of such proceedings under this act, shall be at the expense of, and paid by, the township in which such cemetery is situated, except that in cases where the proceedings are instituted by an individual, without the consent of the township board of health, and the prayer of the petition shall be denied by the court; then, and in that case, the person so instituting the proceedings shall be required to pay such costs as may be allowed by order of the said court. § 2166.

868. Repayment of Price of Lots.—In all cases where the land vacated shall revert to said township or to any person or persons, such township shall on demand, and upon the conveyance of said lot, where conveyance may be necessary, to said township board of health or private person, repay to any owner the price he may have paid for his lot. § 2167.

869. When Land Shall Revert to Grantor.—In all cases where the land embraced in the cemetery so vacated shall not exceed one acre in area it shall revert to the original grantor or his heirs, or be so conveyed to him or them by the said township if necessary; but said grantor or his heirs shall first pay to said township the value of said land, based upon the market price of like land in the immediate vicinity. § 2168.

870. Boards of Health May Provide New Burying Grounds.—The boards of health of the several townships, whenever they may deem it desirable and necessary, may provide new burying grounds or may enlarge the limits of any existing burying grounds and may provide for suitable approaches thereto, or may enlarge the limits of any existing approach to any burying ground in said township; and, in case said board of health shall be unable to agree with the owner or owners of any land or any rights therein which said board of health desires to include within the limits of such burying ground or approaches thereto, as to the compensation to be paid therefor, said board of health may authorize one or more of its members to apply to the circuit judge or any circuit

court commissioner of said county, or to any justice of the peace of said township, for a jury of the vicinage to ascertain and determine the just compensation to be paid for the real estate acquired by said board of health for said burying ground or approaches thereto, or any enlargement thereof, and the necessity for using the same; which application shall be in writing and shall describe the real estate required by such board as accurately as is required in a conveyance of real estate. § 5123.

871. **Empaneling of Jury.**—It is the duty of such circuit judge, circuit court commissioner, or justice of the peace, upon such application being made to him, to issue a summons or venire, directed to the sheriff or any constable of the county, commanding him to summon eighteen freeholders residing within the vicinity of such site, who are in no wise of kin to the owner of such real estate, and not interested therein, to appear before such judge, commissioner, or justice at the time and place therein named, not less than twenty nor more than fifty days from the time of issuing such summons or venire, as a jury to ascertain and determine the just compensation to be made for the real estate required by such board of health for burying ground purposes, and the necessity for using the same, and to notify the owner or occupant of such real estate, if he can be found in the county, of the time when and the place where such jury is summoned to appear, and the object for which such jury is summoned; which notice shall be served at least ten days before the time specified in such summons or venire for the jury to appear as hereinbefore mentioned. § 5124.

872. **Notice of Meeting of Jury.**—Thirty days' previous notice of the time when and the place where such jury will assemble shall be given by the board of health of such township, where the owner or owners of such real estate shall be unknown, non-residents of the county, minors, insane, non compos mentis, or inmates of any prison, by publishing the same in a newspaper published in the county where such real estate is situated; or if there be no newspaper published in such county, then in some newspaper published in the nearest county where a newspaper is published, once in each week for four successive weeks, which notice shall be signed by the board of health or by the township clerk of such township, and shall describe the real estate required for such burying ground, and state the time when and place where such jury will assemble, and the object for which they will assemble; or such notice may be served on such owner personally, or by leaving a copy thereof at his last place of residence. § 5125.

873. **Selection of Jurors.**—It is the duty of such judge, commissioner, or justice, and of the persons summoned as jurors, and of the sheriff or constable summoning them, to attend at the time and place specified in such summons or venire; and the officer who summoned the jury shall return such summons or venire to the officer who issued the same, with the names of the persons summoned by him as jurors, and shall certify the manner of notifying the owner or owners of such real estate, if he was found; and, if he could not be found in said county, he shall certify that fact. Either party may challenge any of the said jurors for the same causes as in civil action. If more than twelve of said jurors in attendance shall be found qualified to serve as jurors, the officer in attendance, and who issued the summons or venire for such jury, shall strike from the

list of jurors a number sufficient to reduce the number of jurors in attendance to twelve; and in case less than twelve of the number so summoned as jurors shall attend, the sheriff or constable shall summon a sufficient number of freeholders to make up the number of twelve; and the officer issuing the summons or venire for such jury may issue an attachment for any person summoned as a juror who shall fail to attend, and may enforce obedience of such summons, venire or attachment, as courts of record, or justices' courts are authorized to do in civil cases. § 5126.

874. Determination and Certificate of Jury.—The twelve persons selected as the jury shall be duly sworn by the judge, commissioner, or justice in attendance, faithfully and impartially to inquire, ascertain, and determine the just compensation to be made for the real estate required by such board of health for such burying ground, and the necessity for using the same in the manner proposed by such board of health, and the persons thus sworn shall constitute the jury in such case. Subpoenas for witnesses may be issued, and their attendance compelled by such circuit judge, commissioner, or justice in the same manner as may be done by a circuit court or by a justice court in civil cases. The jury may visit and examine the premises, and from such examination and such other evidences as may be presented before them, shall ascertain and determine the necessity for using such real estate in the manner and for the purpose proposed by such board of health, and the just compensation to be made therefor; and, if such jury shall find that it is necessary that such real estate shall be used in the manner or for the purpose proposed by such board of health, they shall sign a certificate in writing, stating that it is necessary that said real estate, describing it, should be used as a burying ground or as an addition to a burying ground already established in such townships, or as an approach thereto; also stating the sum to be paid by such township as the just compensation for the same. § 5127.

875. Judgment of Court.—The circuit judge, circuit court commissioner, or justice of the peace, shall sign and attach to and endorse upon the certificate thus subscribed by the said jurors, a certificate stating the time when and the place where the said jury assembled, that they were by him duly sworn as herein required, and that they subscribed said certificate. He shall also state in such certificate who appeared for the respective parties on such hearing and inquiry, and shall deliver such certificates to the township clerk, or to any member of the board of health of such township. § 5127.

Upon filing such certificates in the circuit court of the county where such real estate is situated, such court shall, if it finds all the proceedings regular, render judgment for the sum specified in the certificate signed by such jury, against such township, which judgment shall be collected and paid in the manner as other judgments against townships are collected and paid. § 5128.

876. When Township to Deposit Amount of Judgment.—In case the owner of such real estate is unknown, insane, non compos mentis, or an infant, or cannot be found within such county, it shall be lawful for the said township to deposit the amount of such judgment with the county treasurer of such county, for the use of the person or persons entitled thereto; it shall be the duty of such county treasurer to receive such money, and at the time of receiving it, to give a receipt or certificate to

the person depositing the same with him, stating the time when such deposit was made, and for what purpose; and such county treasurer and his sureties shall be liable on his bond for any money which shall come into his hands under the provisions of this act, in case he shall refuse to pay or account for the same, as herein provided. No such money shall be drawn from such county treasury except upon an order of the circuit court, circuit court commissioner, or judge of probate, as hereinafter provided. § 5129.

877. Writ of Possession.—Upon satisfactory evidence being presented to the circuit court of the county where such real estate lies, that such judgment, or the sum ascertained and determined by the jury as the just compensation to be paid by such district for such burying grounds, has been paid, or that the amount thereof has been deposited according to the provisions of the preceding sections, such court shall, by an order or decree, adjudge and determine that the title in fee of such real estate shall, from the time of making such payment or deposit, forever thereafter be vested in such township and its successors and assigns, and shall, in and by such order or decree, award to such township a writ of possession for the recovery of the possession of such real estate, a copy of which order or decree, certified by the clerk of said county, shall be recorded in the office of the register of deeds of such county, and the title of such real estate shall thenceforth, from the time of making such payment or deposit, be vested forever thereafter in such township and its successors and assigns in fee. § 5130.

878. Testing of Writ of Possession.—Such township may, at any time after making the payment or deposit hereinbefore required, enter upon and take possession of such real estate for the use of said township. And it shall be the duty of the county clerk of said county, on the request of said township, to issue out of and under the seal of the circuit court of said county a writ of possession as awarded in such order or decree; which writ shall be directed to the sheriff of said county, and shall be tested and made returnable, and shall be substantially, so far as may be, in the same form provided for writs of possession in actions of ejectment; and it shall be the duty of such sheriff thereupon to remove the respondent or respondents in such proceedings, and all persons holding under them, or either of them, from the real estate described in such decree and in such writ, and deliver the possession thereof, with the appurtenances, to such township. § 5131.

879. Disagreement of Jury.—In case the jury provided for shall not agree, another jury may be summoned in the same manner, and the same proceedings may be had, except that no further notice of the proceedings shall be necessary; but, instead of such notice, the judge, commissioner, or justice may adjourn the proceedings to such times as he shall think reasonable, not exceeding thirty days, and shall make the process to summon a jury returnable at such time and place as the said proceedings shall be adjourned to. Such proceedings may be adjourned from time to time by the said judge, or commissioner, or justice, on the application of either party, and for good cause, to be shown by the party applying for such adjournment unless the other party shall consent to such adjournment; but such adjournments shall not in all exceed three months. § 5132.

880. Proceedings When Real Estate Mortgaged.—In case the said

burying grounds or addition or approach thereto, is encumbered by mortgage, levy, tax sale, or otherwise, as aforesaid, the mortgagee, or other parties claiming to be interested in said title, shall severally be made a party to the procedure as aforesaid, and shall be authorized upon filing of the certificate of the jury in the circuit court of said county, to appear before the circuit judge and make proof relative to their proportionate claims to the said burying grounds, or addition or approach thereto, or the compensation to be made therefor, as determined by said jury. And the circuit judge shall, by decree, settle their several claims in accordance with the rights of the parties respectively, and may divide the sum awarded by said jury between the claimants as in his judgment will be equitable and right, rendering against said township a separate judgment for each of the amounts so awarded. § 5133.

881. Court May Order Repayment of Money Deposited.—The circuit judge, judge of probate, or circuit court commissioner of any county where any money has been deposited with the county treasurer of such county, as hereinbefore provided, shall, upon the written application of any person or persons entitled to such money, and upon receiving satisfactory evidence of the right of such applicant to the money thus deposited, make an order directing the county treasurer to pay the money thus deposited with him to said applicant; and it shall be the duty of such county treasurer, on the presentation of such order, with the receipt of the person named therein, endorsed on said order and duly acknowledged, in the same manner as conveyances of real estate are required to be acknowledged to pay the same; and such order, with the receipt of the applicant or person in whose favor the same shall be drawn, shall, in all courts and places, be presumptive evidence in favor of such county treasurer, to exonerate him from all liability to any person or persons for said money thus paid by him. § 5134.

882. When Original Judge Unable to Attend.—In case any circuit judge, circuit court commissioner, or justice of the peace, who shall issue a summons or venire for a jury, shall be unable to attend to any of the subsequent proceedings in such case, any other circuit court commissioner or justice of the peace may attend and finish said proceedings. § 5135.

883. Fees of Officers and Jury.—Circuit judges, circuit court commissioners, and justices of the peace, for any services rendered under the provisions of this act, shall be entitled to the same fees and compensation as for similar services in other special proceedings. Jurors, constables, and sheriffs shall be entitled to the same fees as for like services in civil cases in circuit court. § 5136.

884. May Receive Property for Upkeep of Cemetery Lots.—The township board of health of any township shall have power in its discretion to take, receive and hold any property, real or personal, which may be granted, transferred, bequeathed or devised to such board in trust, for the purpose of caring for or keeping in good repair any lot or lots, or any portion thereof, or the whole or a part of any township cemetery, and to expend the same as specified in such trust. § 5137.

885. Disposition of Such Property.—All moneys and property which may be received by said board by way of gift, grant, devise or bequest, for cemetery purposes, shall be under the control of said board, and shall be held in trust by said board, subject to the terms and conditions on

which the same were given, granted, devised or bequeathed, and the same shall constitute a trust fund. If left in money it shall, unless otherwise expressed by those making such gift, grant or bequest, be invested as a permanent fund in good, safe, interest-bearing securities, the interest therefrom to be used as designated in said trust, under the supervision or direction of the said board; and no part of such income shall be used or appropriated for other than the purposes expressed in said trust, except the paying of the clerk of said board for his services in carrying out the provisions of said trust, which amount shall be determined by the board. § 5138.

886. **Trust Fund Shall Not Be Transferred.**—Neither the whole nor any part of the principal or income derived from said trust fund shall be either temporarily or permanently transferred to the general cemetery or other fund, or used for general cemetery purposes, or diverted in any way contrary to the provisions of the trust under which the same was received. § 5139.

887. **Clerk to Be Treasurer; Bond.**—The clerk of said board shall be the treasurer of said board and custodian of such trust fund, and said board shall take into consideration this duty of the clerk in fixing the amount of his official bond, which in all cases shall be adequate to cover the moneys or property under his control for the purposes of this act. § 5140.

888. **Enclosing of Private Cemeteries.**—It shall be the duty of any owner or owners of private cemeteries wherein lots are sold for private or family burial purposes, to keep the same at all times enclosed with a fence with self-locking gates of entrance and exit. Said fence and gates to be erected under the direction of the township board of health and of such a character and strength to prevent the encroachment of live stock, within the bounds of said cemetery. § 11192.

889. **Board of Health to Serve Notice.**—It shall be the duty of the township board of health in any township in this State wherein is located any private cemetery, or cemeteries, coming within the provisions of this act, to serve a written notice on the owner or owners of said private cemetery or cemeteries to either build or repair, as to said board seems necessary within a certain specified period, not to exceed ninety days from the issuing of said notice, such fence as in their judgment fails to meet the requirements of the law, and in lieu of the service of a written notice, publication of the notice may be made in any newspaper of general circulation in the county wherein said private cemetery or cemeteries are located, for a period of six successive weeks. § 11193.

890. **Board of Health Shall Erect Fence.**—If at the expiration of said notice, the said owner or owners have neglected or refused to comply with the requirements of said notice and order of said board of health, it shall be the duty of said board of health to enter upon the premises of said private cemetery and erect or cause to be erected such fence as shall comply with the provisions of this act, and shall certify the costs of said construction to the township board. And said costs shall become a lien against the estate held in such private cemetery and shall be assessed and collected the same as other taxes against real estate in the township wherein such private cemetery is located. § 11194.

891. Sale of Real Estate Used as Cemetery.—No real estate which is or has been in actual use as a cemetery or burying ground, shall be sold by any board of health, except by order of the circuit court, upon the petition of the board of health of the township in which the burial ground is situated. See Sec. 816 of this Guide.

CHAPTER V.

RABIES AMONG DOGS.

892. Action of Board to Prevent Spread of Rabies Among Dogs.—It is the duty of all township boards of health to whom cases of rabies among dogs are reported to immediately investigate the same by some member or members of the board; and, should such investigation show a reasonable probability that a dog is affected with the disease known as rabies, the board of health shall immediately establish such temporary quarantine as may be necessary to prevent the spread of the disease and to make immediate complaint thereof in the manner provided in section 843. § 5114.

893. Board of Health May Order Dogs Restrained, Confined or Muzzled.—The said board of health, when in its judgment such action is necessary to prevent the spread of the disease, has power to order all dogs in the township or any part thereof, restrained, confined or muzzled. § 5115.

The order of the board of health to restrain, confine or muzzle dogs shall be operative when a copy of such order has been left at the usual place of residence of the owner or owners of dogs that are believed to have been exposed to the said disease, or when a copy of said order has been posted in three of the most public places in the township or part thereof to which said order applies. § 5116.

894. Board May Make Complaint; Duty of Justice.—Any member of the board of health or any resident of the township may make complaint to any justice of the peace of said township when any dog within the township is rabid, or has been bitten by or been fighting with a dog that is rabid, or has been running at large in violation of the order of the board of health. Upon such complaint it is the duty of the said justice of the peace to give notice to the owner of such dog or dogs to appear forthwith for the hearing of said complaint. Upon such hearing, if the said justice is satisfied that the said dog is rabid, has been bitten by or been fighting with a dog that is rabid, or has been running at large in violation of the said order of the board of health, he is authorized to make an order that such dog or dogs be killed. The said justice, in his discretion, in all cases in which it does not appear at the hearing that the dog or dogs in question are rabid, may order the said dog or dogs restrained for a period of at least ninety days; and in all cases in which the owner of the dog complained against cannot be ascertained, the justice may immediately order the said dog to be killed. § 5117.

895. Order to Kill Dog.—In all cases in which a dog is ordered killed the justice shall issue an order to any constable of the township directing him to forthwith kill and bury the said dog, for which service the constable shall receive a fee of one dollar, to be paid by the township out

of its general fund in the manner that other constable fees are paid. § 5118.

896. Owners to Be Reimbursed for Loss of Animals.—Whenever any rabid dog shall infect any domestic animal with rabies, and said animal dies therefrom or be ordered killed on account thereof, the owner of said animal shall be reimbursed for the said loss in the manner and out of the fund provided by Act 48 of the Public Acts of 1901. But when any domestic animal shall be infected with rabies by a dog belonging to the owner of said domestic animal, and said animal shall die from said infection or be ordered killed on account thereof, then the owner of said domestic animal shall in no case be reimbursed for said loss, as herein provided. § 5119.

Act 48 of 1901, above referred to, was repealed by Act 347 of 1917. As to reimbursement of owner who sustains a loss by the killing or wounding of his livestock by any dog or dogs, see Section 1867 of this Guide.

897. Penalty for Violations.—Any officer refusing or neglecting to perform any of the duties imposed upon him by any of the provisions of this act shall be deemed guilty of a misdemeanor and subject to the penalties prescribed by law in such cases. § 5120.

Any person violating any of the provisions of this act, or of a quarantine or regulation or order to restrain, confine or muzzle dogs, duly established or issued by the board of health as provided in this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than ten dollars nor more than one hundred dollars, or to imprisonment in the county jail for a period of not less than ten days nor more than thirty days, or both such fine and imprisonment in the discretion of the court. § 5121.

898. Duties of Boards of Health Relative to Indigent Person Bitten by Rabid Dog.—Whenever it shall be proved to the satisfaction of the local board of health that any indigent person or persons within its jurisdiction has been bitten by a rabid dog, or other rabid animal, or in any other manner has been infected with the virus of rabies, said local board of health shall make the necessary arrangements and send the person or persons supposed to be infected with rabies, to the Pasteur Institute at the University of Michigan. The necessary expenses thus incurred shall be a charge upon the township in which the expense was authorized. Before their payment or allowance all bills for such expenses shall be audited by the local board of health. § 5122.

CHAPTER VI.

OFFENSIVE TRADES AND SLAUGHTER HOUSES.

899. Assignment of Places for Carrying on Offensive Trades.—The township board of every township, when they shall judge it necessary, shall from time to time, assign certain places for the exercising of any trade or employment, offensive to the inhabitants, or dangerous to the public health; and they shall forbid the exercise thereof in places not so assigned; and all such assignments shall be entered in the records of the township, and they may be revoked when the said township officers may think proper. § 5087. [See Form No. 27.]

900. Court May Revoke Assignment of Place for Carrying on Offensive Trade.—When any place or building so assigned shall become a nuisance by reason of offensive smells or exhalations proceeding therefrom, or shall become otherwise hurtful or dangerous to the neighborhood, or to travelers, and the same shall be made to appear on a trial, or the admission of the person exercising such trade or employment, before the circuit court for the county, upon a complaint made by the board of health, or by any other person, the said court may revoke such assignment, and prohibit the further use of such place, or building, for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented. § 5088.

901. Person Injured May Recover Damages.—Any person injured, either in his comfort, or the enjoyment of his estate, by any such nuisance, may have an action on the case for the damages sustained thereby in which action the defendants may plead the general issue and give any special matter in evidence. § 5089.

902. Location and Care of Slaughter Houses.—It shall not be lawful for any person or corporation, its officers or agents, to keep or maintain in any city or within one mile of the limits of any city or park, or within thirty rods of any highway or street car line, any slaughter-house, slaughter-yard or slaughter-pen or any other place for slaughtering or killing any animals, or for rendering dead animals, except such place as shall be supplied with an adequate supply of water for daily and constant flushing and purifying of the place, and with adequate sewerage and drainage for the speedy removal of all blood and other fluid refuse from such slaughtering, killing or rendering. § 5161.

903. Disposal of Refuse.—It shall not be lawful for any person or corporation, its officers or agents in charge of any slaughter-house, slaughter-yard or slaughter-pen in or within one mile of any city or park, or within thirty rods of any highway or street car line, to so dispose of any offal, heads, horns, hides or other portions of any dead animal as to be a nuisance, or contrary to the rules of the local board of health. § 5162.

904. Penalty for Violation.—Whoever violates a provision of this act (Sections 902, 903 and 904 of this Guide) shall, on conviction, be deemed to be guilty of a misdemeanor, and shall be fined a sum not exceeding one hundred dollars and costs of prosecution, and in default of payment of such penalty shall be imprisoned in the county jail not exceeding sixty days. § 5163.

CHAPTER VII.

CREMATIONS AND REMOVAL OF DEAD BODIES.

905. Health Officer to Report Cremations and Removals.—It shall be the duty of the health officer of each township, village and city in the State of Michigan to make a report of the cremations of the dead in their respective localities, or of the dead bodies removed from such township, village or city, for the purpose of incineration in other states, said report to be rendered to the state board of health at the end of each calendar year. Act 37 of 1917, Sec. 1.

906. What Report Shall Contain.—In addition to the name and age of the deceased, the report shall give the names of the attending physician and undertaker, together with the dates of death and incineration,

as well as the number of the permit that was filed before the cremation or removal of the dead body in question took place. Act 37 of 1917, Sec. 2.

907. **Health Office to Keep Separate Record.**—In order to facilitate the registration of instances of cremation or the removal of bodies to other states for that purpose, and in order to obtain accurate statistics of the cremations in and from this State, which is the purpose of this bill, the aforesaid health officers shall and hereby are required to keep a separate record, which shall be open to public inspection. Act 37 of 1917, Sec. 3.

908. It shall be the duty of local boards of health to see that the provisions of this bill (Sections 905-908 of this Part) are enforced and to provide for a reasonable compensation of the official making the return. Any official failing or refusing to perform his duty, under this bill, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five dollars, and not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or suffer both fine and imprisonment at the discretion of the court. Act 37 of 1917, Sec. 5.

CHAPTER VIII.

DISTRICT BOARDS OF HEALTH.

909. **Townships May Unite to Form Health District.**—Any two or more contiguous townships or villages in any county, or portion of an adjoining county in this State, may unite to form and constitute a health district in the manner hereinafter provided. Act 130 of 1917, Sec. 1.

910. **Board to Submit Question to Electors.**—On petition of not less than fifteen per cent of the qualified electors of any township or village, the township board, common council or board of trustees, as the case may be, shall submit to the determination of the electors of said township or village the question of uniting with other designated contiguous townships or villages for the purpose of forming a health district subject to the provisions of this act. Such question may be submitted at either a general or specified election in accordance with the statutes of this State pertaining thereto. Said petition shall be filed with the township clerk or the village clerk, as the case may be, and shall be presented to the township board or the village council at the next meeting thereof: Provided, That said petition shall be found by the clerk with whom it is filed to be signed by the requisite number of qualified electors. Thereupon it shall be the duty of said township board or trustees to at once examine said petition, and if the same is found to be in accordance with the requirements of this act, to provide for the submission of the question as aforesaid. Act 130 of 1917, Sec. 2.

911. **Board to Prescribe Form of Ballot, Etc.**—The submission of such question shall in all respects, except as herein otherwise provided, be governed by the general election laws of the State and ballots shall be prepared accordingly. It shall be the duty of the township board, common council or the board of trustees to prescribe the form of such ballot by proper resolution. The vote cast on such question shall be cast and counted in the same manner as is provided by law for the casting and counting of votes at general elections, and return thereof shall be made

to the county board of canvassers of the county in which said township or village is situated. Such board of canvassers shall proceed to canvass said returns in accordance with the general election law of the State and shall certify the result thereof to the county clerk. If it appears from said certificate that a majority of all the votes cast in each of the townships and villages voting on said proposition and embraced within the district as designated in the initiatory petitions are in favor of the establishment of such district, it shall be the duty of such county clerk to place such certificate before the board of supervisors of the county at the next regular or special session thereof. Said board shall thereupon, by resolution, declare the health district created and shall assign thereto a distinctive number. Act 130 of 1917, Sec. 3.

912. Organization of District Board of Health.—Immediately upon the adoption of the resolution aforesaid, the township board of each township, common council or board of trustees of each village embraced within the health district shall select by ballot a member of the district board of health. The person so appointed shall be notified of such fact by the township or the village clerk. The persons so appointed shall constitute said district board, and the first meeting thereof may be called at a suitable time and place within the district by any two of such members on the serving of written notice upon the other members of the board. Each member of such board shall hold his office for two years and until his successor is appointed and qualifies. At such first meeting the board shall proceed to organize by the election of a president, who shall be the presiding officer of the board, and a secretary and treasurer. Said board shall adopt rules governing procedure, its time and place of meeting and other matters necessary to the carrying on of the said work of said board. It shall have general care and oversight of the public health of said district and may exercise all powers granted by the general law of the State to boards of health of townships and villages. Authority is also hereby granted to such board to make such regulations and by-laws respecting nuisances, causes of sickness and other matters pertaining to the public health within such health district as may be deemed necessary for the public health and safety, not repugnant to the general laws of the State. Any person violating such regulation or any by-law shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not exceeding one hundred dollars, or to imprisonment in the jail not exceeding ninety days, or to both such fine and imprisonment in the discretion of the court. Act 130 of 1917, Sec. 4.

913. Powers and Duties of District Board.—Said district board of health shall have power and authority to provide the necessary means to carry out the provisions of this act, and shall employ a competent physician trained in public health work as district health officer, and shall fix the compensation thereof. Such health officer shall have the same powers and perform the same duties, subject to the control and direction of said district board of health, as are or may be prescribed by the general law of the State for health officers in townships. Such health officer shall hold office during the pleasure of said board. Act 130 of 1917, Sec. 5.

914. Estimates for and Raising Amount Necessary for Health District.—Prior to the first day of October of each year, said district board of health shall prepare estimates of the amount that will be necessary for the ensuing year for the carrying on of the purposes of this act in

said district and shall cause the same to be filed with the township clerk. It shall be the duty of said clerk to place said estimates before the township board of the township at the regular October session of the township board thereof. Said township board shall consider the estimate thus presented and shall direct the raising of such amount in the various townships and villages composing such health district as may be required. The aggregate of such amount shall be proportioned among the various townships and villages comprising said health district in accordance with the assessed valuations thereof and shall be certified, spread and collected in the same manner as provided in the general tax laws of the State for the certifying, spreading and collecting of the state and county tax. When collected, such sum shall be paid into the township treasury and shall be by the township treasurer placed in a special fund to be known and designated as "The general fund of health district number ..... of the county of ....." Act 130 of 1917, Sec. 6.

915. **Detailed Statement of Expenditures.**—Money shall be paid out of the fund provided for in the preceding section only for the purpose of this act and by warrant of the secretary and treasurer of the district board of health, countersigned by the president of said board. A full and detailed account of all expenditures shall be made annually by said board and shall be presented to the township board at the same time the estimates hereinbefore provided for are submitted thereto. Such report shall be incorporated in the minutes of the township board and shall be published as a part thereof. Act 130 of 1917, Sec. 7.

916. **Publication of By-Laws.**—Any regulation or by-law adopted by said district board of health as hereinabove authorized and provided, shall go into force and effect at such time as said board shall direct: Provided, however, That no such regulation or by-law shall become effective unless and until it shall have been published once each week for three weeks in succession in some newspaper having a general circulation throughout the various townships and villages constituting the said district. Act 130 of 1917, Sec. 8.

917. **Law Applicable Upon Organization of District Board of Health.**—Upon the organization of a district board of health as hereinabove provided, the provisions of the general law of the State relative to township and village boards of health and to township and village health officers shall be thenceforth suspended in such district except as herein otherwise indicated, it being the intention hereof that the powers and duties exercised and performed under said general laws, by said township and village board of health and health officers shall, under the operation of this act be performed by the district board of health and by the district health officer employed thereby. Act 130 of 1917, Sec. 9.

PART X

SCHOOL DISTRICTS.

CHAPTER I.—Primary and Graded School Districts.
CHAPTER II.—Township School Districts.
CHAPTER III.—Township School Districts in Upper Peninsula.

CHAPTER I.

PRIMARY AND GRADED SCHOOL DISTRICTS.

918. Board May Establish and Change Boundaries.—The township board of each township has authority to divide the township into such number of school districts as may from time to time be necessary, which districts it shall number, and it may regulate and alter the boundaries of the same as circumstances shall render proper; and each district shall be composed of contiguous territory and be in as compact a form as may be. Districts heretofore organized shall remain and have the same boundaries as at the time of the passage of this act, subject to change hereafter in the discretion of the township board. § 5648.

PRIMARY SCHOOL SYSTEM: The whole primary school system was confided by the constitution to the legislature and it cannot be said that the officers of school districts chosen pursuant to the system adopted by the legislature, are constitutional officers.—Belles v. Burr, 76 / 11. The constitution of 1850 left to the legislature, as did the preceding constitution, the establishment of a system of primary schools, restricting the legislature only by providing that a school shall be kept, without charge for tuition, at least three months in each year, and that all instruction shall be conducted in the English language. All other matters seem to be within the discretion of the legislature.—Perrizo v. Kesler, 93 / 283; People v. Howlett, 94 / 168; Pingree v. Board of Education, 99 / 408. The constitution of 1909 provides that a district maintain school five months in each year in order to participate in the primary interest fund. Our primary school system is the pride of the state.—People v. Howlett, 94 / 169.

FORMATION OF DISTRICTS: See Doxey v. Sch. Inspectors, 67 / 603; Brody v. Penn. Twp., Board, 32 / 273; Sch. Dist. v. Sch. Dist., 81 / 343; Simpkins v. Ward, 45 / 561. See Briggs v. Borden, 71 / 89-90; People v. Davidson, 2 Doug. 121; Brewer v. Palmer, 13 / 107. When two districts are annexed without any other change in their boundaries, the mere fact that one number is preferred to another does not change the real character of the annexation. —Brewer v. Palmer, 13 / 109. When one district is annexed to another, its corporate existence ceases and it cannot be sued for debts; the new district must be held responsible for them.—Id. But when a district is parceled out among several other districts, the latter cannot be held jointly liable for the debts of the former; whatever they are bound to pay is a several and not a joint obligation.—Halbert v. Sch. Dists., 36 / 421. Change of a district formed by special act of the legislature.—Sch. Dist. v. Dean, 17 / 223. The organization of a new township severs its territory from the school district within which it was formerly embraced.—People v. Ryan, 19 / 203. See Section 34.

QUESTIONING REGULARITY: The regularity of the proceedings for the formation of a district and the existence of it cannot be questioned collaterally, but only in direct proceedings.—Clement v. Everest, 29 / 19. See Sch. Dist. v. Inspectors, 27 / 3; Stuart v. Sch. Dist., 30 / 69; Lord v. Every, 38 / 405; Bird v. Perkins, 33 / 30; Stockle v. Silsbee, 41 / 621; Keweenaw Ass'n v. Sch. Dist., 98 / 437. The legality of the organization and existence of the district cannot be tested by certiorari.—Jaquith v. Hale, 31 / 430. Certiorari to review the proceedings in organizing a district will not lie after the district is actually organized and has assumed the functions of a corporation; its corporate existence must then be tested by quo warranto.—Sch. Dist. v . Inspectors, 27 / 3; People v. Gartland, 75 / 143. But there should be some special and extraordinary reason to justify interference by quo warranto with the organization of a school district, as the statutes provide a speedier remedy by an appeal from the district board to the township board.—Lord v. Emery, 38 / 405. And the supreme court will not meddle with the concerns of school districts, on mandamus, except on things of substance.—Sch. Dist. v. Riverside Twp., 67 / 406. The facts in regard to the notices and proof of posting are sufficiently established if set out in the return of the board, though not appearing in the clerk's minutes of the proceedings. The act of detaching territory from two school districts and forming a new district by one and the same motion, after parties interested have had ample opportunity to be heard on both questions, is valid.—Smelzer v. Inspectors Big Prairie Twp., 125 / 666.

919. Board May Divide or Change Any Primary District.—Hereafter the township board of any township may divide or change the boundaries of any primary school district regardless of whether such school district was formed or created under the general school law, or under any local act or special law in accordance with the same rules and in such manner as is prescribed for the formation and alteration of school districts. In those instances in which the school district lies in more than one township, such action shall be taken at a joint meeting of the boards of the various townships interested. § 5765.

920. Board May Consolidate School Districts.—Hereafter the township board of any township may consolidate school districts regardless of whether such school districts were formed or created under the general school law or created under any local or special law in accordance with the same rules and in such manner as is prescribed for the formation and alteration of school districts. In those instances in which the school districts lie in more than one township, such action shall be taken at a joint meeting of the boards of the various townships interested: Provided, That two or more districts shall not be consolidated, unless such consolidation is approved by a majority vote of the electors voting at an annual meeting, or a special meeting in each district affected. § 5766. As Am. by Act 136 of 1917.

921. Notice of Formation of New Districts, Etc.—Whenever the township board of any township forms a school district therein, it is the duty of the clerk of such board to deliver to a taxable inhabitant of such district a notice in writing of the formation of such district, describing its boundaries and specifying the time and place of the first meeting, which notice, with the fact of such delivery, shall be entered upon record by the clerk. The said notice shall also direct such inhabitant to notify every qualified voter of such district, either personally or by leaving a written notice at his place of residence, of the time and place of said meeting, at least five days before the time appointed therefor; and it is the duty of such inhabitant to notify the qualified voters of said district accordingly, and said inhabitant, when he has notified the qualified voters as required in such notice, shall endorse thereon a return showing such notification with the date or dates thereof, and deliver such notice and return to the chairman of the meeting, to be by him delivered to the director chosen at such meeting, and by said director recorded at length as a part of the records of such district. § 5649. [See Forms Nos. 46, 47 and 48.]

NOTICE: The board may, under one notice, at one meeting, by separate action, detach lands from separate school districts and attach them to one district.—Doxey v. School Inspectors, 67 / 601. Irregularity in notice.—Parman v. Inspectors, 49 / 63. See Roeser v. Gartland, 75 / 144.
RECORDS: Importance of.—Sch. Dist. v. Snell, 24 / 352.

922. Proceedings in Case of Failure to Organize District.—In case the inhabitants of any district fail to organize the same in pursuance of such notice as aforesaid, the said clerk shall give a new notice in the manner hereinbefore provided, and the same proceedings shall be had thereon as if no previous notice had been delivered. § 5650. [See Forms Nos. 46, 47 and 48.]

923. Formation of Fractional School Districts.—Whenever it is necessary or convenient to form a district from two or more adjoining town-

ships, the township boards, or a majority of them, of each of such adjoining townships, may form such district, to be designated as a fractional district, and direct which township clerk shall make and deliver the notice of the formation of the same to a taxable inhabitant thereof, and may regulate and alter such district as circumstances may render necessary in the same manner that other districts are altered. The annual reports of the director of such district shall be made to the clerk of the township in which the schoolhouse may be situated, and the township board of such township shall number said district. § 5651.

Saginaw Twp. v. Sch. Dist., 9 / 544; Brewer v. Palmer, 13 / 109.

924. **When Districts Deemed to Be Organized.**—Every such school district shall be deemed duly organized when any two of the officers elected at the first meeting have filed their acceptances in writing with the director, and the same have been recorded in the minutes of such first meeting. Every school district is presumed to have been legally organized when it has exercised the franchises and privileges of a district for the term of two years; and such school district and its officers are entitled to all the rights, privileges and immunities, and subject to all the duties and liabilities conferred upon school districts by law. Any school district shall lose its organization whenever there are not three or more persons in such district qualified under the law to hold district offices and whenever such district fails to maintain school for the time required by law for a period of two successive years either within its own boundaries or by providing for the education of the children in other districts. Upon the happening of either condition, the township board, or joint board, if such district be fractional, shall declare by resolution such district dissolved and shall immediately attach the territory thereof, in whole or in part, to other districts already organized and make an equitable distribution of the money, property and other material belonging to such district among the districts to which the territory thereof shall be attached, in accordance with the provisions hereinafter stated. § 5652.

PRESUMPTION OF LEGAL ORGANIZATION: When a district has exercised the franchises and privileges of a school district for over two years, it is too late to question the legality of its organization.—Sch. Dist. v. Sch. Dist., 63 / 56; Sch. Dist. v. Sch. Dist., 81 / 343; Bd. of Ed. of Traverse City v. Straub, 182 / 665. The same rule which recognizes the right of officers de facto recognizes corporations de facto.—Clement v. Everest, 29 / 23. In public affairs, when the people have organized themselves under color of law into the ordinary municipal bodies, and have gone on year after year raising taxes, making improvements and exercising their usual franchises, their rights are properly regarded as depending quite as much on the acquiescence as on the regularity of their origin, and no ex post facto inquiry can be permitted to undo their corporate existence.—People v. Maynard, 15 / 470.

925. **Record to Be Evidence.**—The record of the first meeting made by the director shall be prima facie evidence of the facts therein set forth and of the legality of all proceedings in the organization of the district prior to the first district meeting; but nothing in this section contained shall be so construed as to impair the effect of the record kept by the township board as evidence. § 5653.

926. **Corporate Powers of School Districts.**—Every school district organized in pursuance of this chapter, or which has been organized and continued under any previous law of the State or territory of Michigan, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and style of "school district

number ..... (such number as shall be designated in the formation thereof by the township board), of ..... (the name of the township or townships in which the district is situated),'' and in that name shall be capable of suing and being sued, of contracting and being contracted with, and of holding such real and personal estate as is authorized to be purchased by the provisions of law, and of selling the same. § 5654.

CORPORATE POWERS: The school district, under our statutes, is a corporation, and, as such corporation, is represented by three officers: a moderator, director and assessor. The affairs of the district are managed and controlled by them, under certain restrictions.—Sch. Dist. v. Sch. Dist., 63 / 57. A school district can take and hold bequests of money for the maintenance of a public library for the use and benefit of the residents of the district.—Maynard v. Woodward, 36 / 423. School districts, like townships and counties, are subdivisions of the state. This section gives them the capacity to sue and be sued.—Van Wert v. Sch. Dist., 100 / 333. School districts are municipal corporations.—Seeley v. Board of Ed., 39 / 486; Sch. Dist. v. Gage, 39 / 484; Belles v. Burr, 76 / 1. And cannot be garnisheed even by their own consent, unless the debtor also consents.—Id. They preceded the constitution (Stuart v. Sch. Dist., 30 / 69), and were recognized by that instrument.—Belles v. Burr, 76 / 11. It is familiar doctrine that school districts are state agencies with limited powers, confined, generally, to those expressly enumerated and those necessarily implied.—Attorney General v. Detroit Bd. of Education, 175 / 440.

ASSUMPSIT: This section gives school districts capacity to sue and be sued. If the claim against the district is unliquidated, assumpsit will lie and if liquidated the remedy would be by mandamus to compel the necessary action to cause it to be paid.—Waterman, etc., Co. v. Sch. Dist., 183 / 175. Where the giving of the contract sued upon, and the question of whether the plaintiff had performed its part were both in dispute, the claim is unliquidated, and assumpsit, not mandamus, is the proper remedy.—Waterman, etc., Co. v. Sch. Dist., 183 / 172.

927. Alteration of Boundaries of School Districts, Etc.—Whenever the township board shall contemplate an alteration of the boundaries of a district, the township clerk (and for meetings of boards to act in relation to fractional districts, clerks of the several townships interested) shall give at least ten days' notice of the time and place of the meeting of said board and the alteration proposed, by posting such notice in three public places in the township or townships, one of which notices shall be in each of the districts that may be effected by such alteration. Whenever the township boards of more than one township meet, they shall elect one of their number chairman, and another clerk thereof. § 5655. [See Form No. 49.]

The township board may in its discretion detach the property of any person or persons from one district and attach it to another; except that no land which has been taxed for building a schoolhouse shall be set off into another school district for the period of three years thereafter, except by consent of the owner thereof; and no district shall be divided into two or more districts without the consent of a majority of the resident taxpayers of said district, and no two or more districts shall be consolidated without the consent of a majority of the resident taxpayers of each district. § 5656. [See Forms Nos. 50 and 51.]

The township board shall attach to a school district contiguous territory in the township and not in any organized district. § 5657.

NOTICE: The notice required is jurisdictional and indispensible.—Coulter v. Inspectors, 59 / 391; Sch. Dist. v. Inspectors, 63 / 611; Gentle v. Inspectors, 73 / 40; Graves v. Inspectors, 102 / 635; Passage v. Inspectors, 19 / 330; Andress v. Inspectors, 19 / 332. Proof of the posting of such notice should be filed with the clerk of the board, before any action is taken.—Coulter v. Inspectors, 59 / 391; Sch. Dist. v. Inspectors, 63 / 611; Graves v. Inspectors, 102 / 635. Where notice is not given the filing of the consent of a majority of the resident taxpayers of the district affected will not validate the action.—Gentle v. Inspectors, 73 / 40. Notices must be posted in each township affected by the alteration.—Sch. Dist. v. Metcalf, 93 / 499. The object of the notice is to enable parties interested to be heard before any action is taken.—Gentle v. Inspectors, 73 / 45; Sch. Dist. v. Metcalf, 93 / 499. As to the provision in the former law see Sch. Dist. v. Sch. Dist., 63 / 51. Notice of posting notices in three public places is jurisdictional. Affidavit must show that the notices were so posted. Certiorari will lie to test validity of proceedings where petitioner moves promptly.—Huyser v. Board of School Inspectors, 131 / 568.

FRACTIONAL DISTRICTS: The action of the joint boards is required in case of fractional districts.—Sch. Dist. v. Sch. Dist., 81 / 343.

DISSOLVING DISTRICT: The school inspectors (township board) have power to alter boundaries of districts, and attach or detach persons, to or from any district; but no power is anywhere granted to them to disband, dissolve or destroy a district, save as restricted under this section.—Briggs v. Borden, 71 / 90. As intimated in Doxey v. Inspectors, 67 / 604, the board have no authority to divide up a district and destroy it without the consent of a majority of the resident taxpayers; nor can they destroy it by cutting it up into pieces and attaching all the territory to other districts without such consent.—Id. The terms "dissolve" and "disband" are of similar import and a vote taken to "disband" is supported by notice of a meeting to vote upon a proposition to "dissolve."—Id.

CONSENT OF OWNER: Lands taxed within three years for building a schoolhouse, not to be set off into another district without the consent of the owner.—Coulter v. Inspectors, 59 / 391.

CONSOLIDATION: The right of inspectors to consolidate districts depends upon the consent of majority of resident taxpayers. Where a school district de facto formed by consolidation of other districts has been in existence two years or more the court will not set aside action of board.—Howell v. Shannon, 130 / 556.

POWER OF LEGISLATURE: The legislature may change the boundaries of district.—Att'y Gen. ex. rel. Kies v. Lowery, 131 / 639.

928. Clerk to Give Notice of Alteration, Etc., to Districts Affected.—In all cases where an alteration of the boundaries of a school district are made, the township clerk shall, within ten days, deliver to the director of each district affected by the alteration a notice in writing, setting forth the action of the township board and defining the alterations that have been made. § 5658. [See Form No. 52.]

929. Board to Determine Amount Due New District on Division.—When a new district is formed in whole or in part from one or more districts possessed of a schoolhouse or entitled to other property, the township board at the time of forming such new district, or as soon thereafter as may be, shall ascertain and determine the amount justly due to such new district from any district out of which it may have been in whole or in part formed, as the proportion of such new district, of the value of the schoolhouse and other property belonging to the former district, at the time of such division; and whenever by the division of any district, the schoolhouse or site thereof shall no longer be conveniently located for school purposes and shall not be desired for use by the new district in which it may be situated, the township board of the township in which such schoolhouse and site shall be located may advertise and sell the same, and apportion the proceeds of such sale and also any moneys belonging to the district thus divided among the several districts erected in whole or in part from the divided district. § 5659.

Saginaw Twp. v. Sch. Dist., 9 / 541; People v. Ryan, 19 / 203; Ramsey v. Everett Twp. Clerk, 52 / 344; Sch. Dist. v. Riverside Twp., 67 / 404.

NEW DISTRICT: See Pine Sch. Dist. v. Wilcox, 48 / 404, and Section 934 as to appeals. Bill to prevent the consummation of a void apportionment.—Sch. Dist. v. Sch. Dist., 63 / 58. Bill to restrain the sale of the schoolhouse.—Briggs v. Borden, 71 / 87. Upon the formation of a new district by the union of two or more, the new district succeeds to the credits and property and is liable for the debts of the old ones.—Brewer v. Palmer, 13 / 104; Halbert v. Districts, 36 / 421.

930. How Proportion of Districts Ascertained.—Such proportion shall be ascertained and determined according to the value of the taxable property of the respective parts of such former district at the time of the division, by the best evidence in the power of the township board; and such amount of any debt due from the former district, which would have been a charge upon the new had it remained in the former district, shall be deducted from such proportion. But no real estate thus set off, and which shall not have been taxed for the purchase or building of such schoolhouse, shall be entitled to any portion thereof nor be taken into account in such division of district property. § 5660.

DEBTS OF OLD DISTRICTS: Where the territory of a school district is absorbed by

other districts, the statute contemplates that the township board shall make an equitable adjustment of property and debts, so as to proportion them fairly among the districts which have succeeded to the jurisdiction of that which has been divided.—Halbert v. Sch. Districts, 36 / 421. Where a school district has been subdivided and other districts set off, the debts of the original district cannot be parceled out among all by a proceeding in the courts, so as to give creditors a remedy against any but the original debtors.—Turnbull v. Alpena Sch. Dist., 45 / 496; Maltz v. Board of Education, 41 / 547. A debt once existing must remain a debt against the corporation that created it, and its obligation is not destroyed by a change in corporation limits. If contribution is required, it must be obtained by the corporation and not by its creditors, unless otherwise provided by law.—Turnbull v. Alpena Sch. Dist., 45 / 499.

931. Classification, Government, Control and Administration of School Districts.—The legislature of 1917 passed "an act to classify all school districts, now in existence or hereafter created, which shall have a population of five hundred or more and less than seventy-five thousand as districts of the third or fourth classes; to provide for the government, control and administration of such school districts and the schools therein through boards of education; to provide for the manner of nomination and election of such boards and their powers and duties; and to repeal all general or special laws that conflict with the provisions of this act." See Act 166 of 1917.

932. Compulsory Education of Children.—For the provisions of law for the compulsory education of children, see Act 200 of 1905, being § § 5979-84, as amended by Act 179 of 1917.

933. Clerk to Certify Taxes on Division of Districts.—When certifying the school taxes to the supervisor, the township clerk shall also certify to the director of each district interested the amount of taxes to be assessed to meet the apportionment of property on division of districts. See Sec. 1290 of this Guide.

934. Appeal From Board in Formation of School Districts—Whenever any five or more tax paying electors having taxable property within any school district shall feel themselves aggrieved by any action, order or decision of the township board or joint boards with reference to the formation or any division or consolidation of said school district, they may, at any time within sixty days from the time of such action on the part of said board, appeal from such action, order or decision of said board to the county commissioner of schools and a circuit court commissioner of the county in which such school district is situated. The county commissioner of schools and circuit court commissioner shall constitute a board of appeals for all such cases and shall be entitled to the usual fees provided by statute for circuit court commissioner. When an appeal shall be filed with the board of appeals herein provided for, said board shall serve notice on the clerk of the township board or the clerks of the joint boards who have made the decision appealed from, and said clerk or clerks shall notify the several members of the board of such appeal. The notice of the clerk and township board shall state the day and hour when such appeal will be heard, and it shall be the duty of said board of appeals to review, confirm, set aside or amend the action, order or decision of the township board or boards thus appealed from; or if in its opinion the appeal is frivolous or without sufficient cause it may summarily dismiss the same. § 5731.

ACTION OF INSPECTORS: The board of inspectors act in the exercise of a public discretionary power in creating or changing districts, which can be reviewed, if at all, only by some direct appellate process which operates upon the proceedings themselves to affirm, reverse or change them.—Clement v. Everest, 29 / 19.

APPEAL: School Dist. v. Wilcox, 48 / 404. When it seems an appeal could not be taken. —Sch. Dist. v. Sch. Dist., 63 / 57-8.

CERTIORARI: The issuance of a writ of certiorari being largely discretionary, and not

permissible to accomplish a palpable injustice, a writ issued to review the setting aside of the organization of a school district out of the territory of two others will be dismissed when each of the three districts as so organized would be financially unable to support a school without imposing upon the residents a greater burden than they are able to bear.—Silver v. Hamilton Township Board, 146 / 393.

935. Appellants to State Ground of Appeal and File Bond.—Said appellants shall, before taking such appeal, make out and file with the board of appeals a written statement, to be signed by said appellants, setting forth in general terms the action, order or decision of the township board with respect to which the appellants feel themselves aggrieved, and their demand for an appeal therefrom to the board of appeals, and also cause to be executed and signed by one of their number, and by two good and sufficient sureties to be approved by the board of appeals, a bond to the people of the State of Michigan in the penal sum of two hundred dollars, conditioned for the due prosecution of said appeal before said board, and also in case of dismissal of said appeal as frivolous by said board for the payment by said appellants of all costs occasioned by reason of said appeal. § 5732.

BOND: The statute is positive in requiring the bond to be approved and it cannot be dispensed with.—Clement v. Everest, 29 / 21. The appeal is not complete without such approval.—Id.

936. Township Board to File Transcript of Proceedings.—Upon the filing of appeal papers and bond with the board of appeals and after notice by the board of appeals to the township board from whose decision appeal is taken, said township board shall within ten days thereafter make out and file with the said board of appeals a full and complete transcript of all its proceedings, actions, orders or decisions with reference to which the appeal is taken and of its records of the same; also said bond and appeal papers and all petitions and remonstrances, if any, with reference to the matters appealed from, and upon the filing of the same with the board of appeals the said board shall be deemed to be in possession of the case, and if the return be deemed by it insufficient the board may order a further and more complete return by said township board, and when such return shall by it be deemed sufficient it shall proceed with the consideration of the appeal at such time or times, within ten days after such return in such manner and under such affirmation, amendment or reversal of the action, order or decision of the township board appealed from, as in its judgment shall seem to be just and right; or if it deem the appeal to be frivolous it may summarily dismiss the same. § 5733.

937. Consent for Alteration of Graded District.—No alterations shall be made in the boundaries of any graded school district without the consent of a majority of the trustees of said district, which consent shall be spread upon the record of the district, and placed on file in the office of the clerk of the township or city to which the reports of said district are made. § 5737.

NO ALTERATION: People v. Ryan, 19 / 207; Simpkins v. Ward, 45 / 559; Burnett v. Inspectors, 97 / 103. Addition of territory by legislative action.—Keweenaw Ass'n v. Sch. Dist., 98 / 439-41.

938. Appeal From Action of Trustees.—Any three or more taxpaying electors having children between the ages of five and twelve years, residing one and one-half miles or more from a schoolhouse in such district, feeling themselves aggrieved by any action, order or decision of the board of trustees with reference to the alteration of said school dis-

trict affecting their interests, may, at any time within sixty days from the time of such action on the part of said board of trustees, appeal from such action, order or decision of such board of school trustees to the judge of probate of the county in which such schoolhouse is situated, in the same manner, as nearly as may be, as appeals from the action of the township board, as provided by sections 934 and 935. Said applicants shall file a bond with said judge of probate, with sufficient sureties to be approved by said judge of probate, in the penal sum of not exceeding two hundred dollars in the discretion of the court, indemnifying said school district of any and all costs made on such appeal in case the appellants shall not prevail therein. Whereupon said judge of probate shall be empowered to entertain such appeal, and review, confirm or set aside or amend the action of the board of trustees appealed from. § 5737.

939. When Town Board May Unite Contiguous Districts to Form Graded District.—Whenever two or more contiguous districts, having together more than one hundred children between the ages of five and twenty years, after having published in the notices of the annual meetings of each district the intention to take such action, shall severally, by a vote of a majority of the qualified voters attending the annual meetings in said districts, determine to unite for the purpose of establishing a graded school district under the provisions of this chapter (§ § 5734-39) the township board of the township or townships in which such districts may be situated shall, on being properly notified of such vote, proceed to unite such districts, and shall appoint as soon as practicable a time and place for a meeting of the new district, and shall require three notices of the same to be posted in each of the districts so united at least five days before the time of such meeting, and at such meeting the district shall elect a board of trustees, as provided in section one of this chapter, and may do whatever business may be done at any annual meeting. § 5738. [See Form No. 53.]

940. When Board Shall Make Change From Graded to Primary District.—Whenever the trustees of any organized graded school district shall be presented twenty days before the annual meeting thereof with a petition signed by ten voters of said district, stating that it is the desire of said petitioners that at the annual meeting of said school district there shall be submitted to said annual meeting the proposition to change from a graded school district to one or more primary school districts, the said trustees shall, in their notice of such annual meeting, state that the proposition set forth in said petition will be presented to said meeting, and if two-thirds of the qualified voters present at said meeting shall vote to change to one or more primary school districts such change shall be made, and it shall be the duty of the township board of the township or townships in which such district is situated, upon being duly notified of such vote, to proceed to change or divide such district as determined by such annual meeting, and they shall provide for the holding of the first meeting in the, or each of the, proposed primary school districts in the same manner as is provided for by law for the organization of primary school districts, and whenever a fractional graded school district shall be so changed, the township boards of the respective townships where such graded school district is situated shall organize the said district into one or more primary school districts, as provided for by law. § 5739.

941. Town Clerk to Make Triplicate Reports to Commissioner.—The township clerk shall receive the annual reports of the school directors of his township, and on the first Monday of August in each year make triplicate reports setting forth the whole number of school districts in his township, if any, the amount of money raised and received for school libraries and such other items as shall from year to year be required by the superintendent of public instruction, together with the several particulars set forth in the reports of the several school directors for the preceding year, and within ten days thereafter he shall forward two copies of the same, together with two copies of each of the reports from school directors, to the county commissioner of schools and file the other copy or copies of these reports in his office. He shall receive all communications, blanks and documents transmitted to him by the superintendent of public instruction and dispose of the same in the manner directed by said superintendent. But in case the township is organized into a township district or a fractional township district the board of education of such township district or fractional township district shall meet on the first Monday in August and make the triplicate reports to the superintendent of public instruction, and in such cases this report shall take the place of the report above provided for to be made by the township clerk, and the said board shall dispose of its report in the same manner as is provided for the township clerk. § 5694.

942. When Public Moneys Not to be Distributed to District.—The county commissioner of schools shall annually send to each township clerk and to the secretary of each board of education a complete list of the legally qualified teachers of the county, and at the time the township clerk shall make the triplicate reports provided for in section 941 he shall compare the list of teachers employed in the township with said complete list of teachers, and if in any school district or in the township district a school has not been taught for the time required by law during the preceding year by a legally qualified teacher, no part of the primary school interest fund shall be distributed to such district or to such proportional part of the township, although the report from such district or township sets forth that a school or schools have been so taught, and it shall be the duty of the township clerk or the board of education, when said board shall make the reports as hereinbefore provided, to certify all these facts as to the employment of teachers to the superintendent of public instruction. § 5694.

943. Publication of Financial Statement and Proceedings of School Meeting in Graded District.—Previous to the first Monday in August of each year the board of education or board of trustees, as the case may be, of each graded school district in this State shall cause to be published in a newspaper published in said district or in the county in which said district is located, said newspaper to be designated by said board of education, a complete statement of the proceedings of the annual school meeting and an itemized financial statement of the receipts and expenditures of said district during the preceding school year, the expense of said publication to be paid out of the general fund of the district and proof of said publication shall be filed at the office of the county commissioner of schools not later than August fifteenth of each and every year. § 5809. As Am. by Act 269 of 1917.

944. Penalty for Neglect to Publish.—If any board of education or board of trustees fail or neglect to comply with the foregoing section, each member of any such board shall forfeit the sum of ten dollars upon conviction thereof in any court of competent jurisdiction. § 5810.

945. To Make and File Map of School Districts.—Each township clerk shall make or cause to be made a map of his township, showing by distinct lines thereon the boundaries of each school district and parts of school districts therein, if such school districts exist, and shall regularly number the same thereon as established by proper authority. One copy of such map shall be filed by said clerk in his office and one other copy he shall file with the supervisor of the township. If any division or alteration is at any time made in the boundaries of any district or of any township district, the township clerk shall within one month thereafter file a new map and copy thereof as aforesaid showing such changes. § 5695.

That certain lands are within a particular school district may be shown by parol, without producing maps, plats or documents.—Brooks v. Fairchild, 36 / 234.

946. When Township Board May Fill Vacancies in District Offices.—In case any one of the district offices becomes vacant, the two remaining officers shall immediately fill such vacancy; or in case two of the offices become vacant, the remaining officer shall immediately call a special meeting of the district to fill such vacancies; in case any vacancy is not filled as herein provided within twenty days after it has occurred, or in case all the offices in a district become vacant, the township board of the township to which the annual reports of such district are made shall fill such vacancies. § 5670. [See Form No. 54.]

947. When Board to Establish Schoolhouse Site.—The qualified voters of any school district, when lawfully assembled, may designate by a vote of two-thirds of those present, such number of sites as may be desired for schoolhouses, and may change the same by a similar vote at any annual or special meeting, or by the same vote may enlarge any existing site. Whenever the question of designating a school site or of changing a school site, is to be brought before the school meeting, the notice of said meeting shall state the intention to vote upon such question. When no site can be established by such inhabitants as aforesaid, the township board of the township or townships in which the district is situated, upon notification by the district board that the district is unable to fix a site, shall determine where such site shall be, and their determination shall be certified to the director of the district, and shall be final, subject to alteration afterwards by the township board, on the written request of two-thirds of the qualified voters of the district, or by two-thirds of the qualified voters agreeing upon a site, at a district meeting lawfully called. § 5716. [See Forms Nos. 55 and 56.]

NO SITE ESTABLISHED: It is only when the inhabitants cannot agree in establishing any site at all, that the inspectors are allowed to fix one.—Andress v. Inspectors, 19 / 332.
TOWNSHIP BOARD: Powers and duties formerly given to school inspectors now vest in township board.
NOTICE: The amendment of 1905 requires that notice of intention to vote on a change of site must be given before the question may be passed on at an annual meeting.—Calkins v. Rice, 170 / 234. Insufficient notice.—Id.

948. Township and School District Libraries.—The provisions of law governing township and school districts libraries and prescribing the powers and duties of township boards relating thereto, are compiled in Chapter VIII of Part I, being sections 88 to 116, inclusive, of this Guide.

949. When Board to Submit Question of Establishment or Discontinuance of Rural High School.—The township board of any township, not having within its limits an incorporated village or city, upon the petition of not less than one-third of the taxpayers of such township for the establishment of a rural high school, or for the discontinuance of any rural high school established under the provisions of this act, shall submit such question to a vote of the qualified electors of said township at a special election called for that purpose within sixty days from date of receipt of said petition. § 5934.

950. Manner of Conducting Election.—All elections ordered by any township board in pursuance of the preceding section shall be held at the usual place or places of holding township elections, and notice shall be given and the election conducted in all respects as provided by law for the election of township officers and the ballots shall have printed thereon, "For rural high school—Yes," "For rural high school—No," or, in case of the discontinuance of any rural high school established under the provisions of this act, "For discontinuance of rural high school—Yes," "For discontinuance of rural high school—No." § 5935.

951. Election of Trustees of Rural High Schools.—If more votes are cast in favor of such high school than against it at such election, the qualified electors of said township shall elect at their next annual election of township officers a board of trustees of three members, one for one year, one for two years and one for three years, and on the expiration of their terms of office and regularly thereafter their several successors shall be elected in like manner for a term of three years each: Provided, That when a rural high school shall have been established by the electors of any township, the first election of such trustees may be ordered by the township board to be held at any time after the ten days' legal notice of such election shall have been given. The township clerk shall be ex officio member and the clerk of the board and the township treasurer shall be ex officio member and treasurer of the board, with the same power as other members of the board. If two-thirds of the votes cast are in favor of the discontinuance of any rural high school, such rural high school shall be discontinued in the same manner as is provided by law for the discontinuance of district schools. § 5936.

952. Liability of Township Clerk.—If any township clerk neglects or refuses to make out and transmit the annual report containing the reports of the several school districts of his township or any other report which the law may require of him, within the time limited therefor, he shall be liable to pay the full amount lost by the township or any district or districts by such neglect or refusal, with interest thereon, to be recovered in an action of debt or on the case. § 5755.

953. Commissioner to Furnish Clerk List of Teachers.—It is the duty of the county commissioner to furnish, previous to the third Monday in July in each year, to the township clerk of each township in the county, and to each of the officers of every school district in the county, a list of all persons legally authorized to teach in the county at large during the preceding school year, and in such township, with the date and term of each certificate, and if any have been suspended or revoked, the date of such suspension or revocation. § 5884.

954. Township School Districts.—The law governing the organization

of a township into a single school district and prescribing the powers and duties of the township board and other officers relating thereto has been compiled in the next Chapter of this Part, being sections 961 to 984, inclusive.

955. Pay of Tuition of District Pupils to Any High School.—The district board or board of education of any school district which does not maintain a high school, shall have authority and is hereby required to vote a tax sufficient to pay the tuition to any high school which is approved by the superintendent of public instruction, of any children of school age, residents of said district at the time of giving notice as hereinafter provided, who have completed the studies of the eight grades, not exceeding in amount twenty-five dollars per pupil per year, unless the voters appropriate a larger sum at the annual school meeting, and may vote a tax to pay the transportation during school days of such children, such tuition to be paid by the treasurer of the district in which the pupil resided at the time of giving the notice herein provided, to the treasurer of the district where the high school attended is located: Provided, That a parent or the legal guardian of such children, or the person in parental relation to such children, shall give written notice to the district board or board of education on or before the fourth Monday of June, that such children desire to attend any high school during the ensuing year. Upon receiving written notice of children eligible to attend high schools, the district board or board of education shall vote a tax sufficient to cover the necessary expense for tuition as herein provided, and may vote a tax sufficient to cover the necessary expense for daily transportation of such children: Provided, That any surplus moneys in the treasury of said district belonging to the primary fund may be used in paying necessary tuition in lieu of a tax therefor. § 5830. As Am. by Act 11 of 1917.

956. Organize as Graded School District.—Any school district containing more than seventy-five children between the ages of five and twenty years, may, by a majority vote of the qualified voters present at any annual or special meeting, organize as a graded school district. The intention to submit the question of the organization of a graded school district shall be expressed in the notice of such annual or special meeting. When such change in the organization of the district shall have been voted, the voters at such annual or special meeting shall proceed immediately to elect by ballot a board of education of five members, one member for the term of one year, two for the term of two years and two for a term of three years, and annually thereafter a successor or successors to the member or members whose term of office shall expire. Any qualified voter in such district whose name appears upon the assessment roll at the time of such election and who is the owner in his own right of the property so assessed, shall be eligible to election or appointment to the office of member of the board of education. In the election of members of the board of education and all other school officers, the person receiving a majority of all the votes shall be declared elected: Provided, That all graded school districts organized prior to the year nineteen hundred seven shall operate after the passage of this act under the provisions of this act without reorganization: And provided also, That in all such districts the members of the board of education hereafter elected shall be elected under the provisions of this act. § 5734. As Am. by Act 15 of 1917.

957. School Tax in Districts Having Over 15,000 and Less Than 100,000 Population.—The district board or board of education of any school district in the State of Michigan, whose population shall not be less than fifteen thousand and not more than one hundred thousand, wherein taxes authorized to be raised for school purposes are based upon a rate per capita for each child of school age as shown by the last preceding school census of the district, is hereby authorized to impose a tax on the taxable property of the district for the purpose of paying the ordinary expenses of conducting its schools and of paying all or any part of the principal and the interest on the bonded indebtedness of the district, to be levied and collected in the same manner as provided by law for school district taxes, in an amount not exceeding the rate per capita for each child of school age as shown by the last preceding school census of the district, as fixed by the taxable inhabitants of such school district at any regular or special meeting of such district. The fixed rate per capita shall continue until changed and a new rate fixed at a regular meeting of the district by an affirmative vote of a majority of the taxable inhabitants of the district voting thereon. Act 48 of 1917, Sec. 1.

958. Use of Schoolhouses and Grounds as Recreation Centers.—The school board of any city, village, township or school district in this State, upon the written application of any responsible organization located in said school district, or of a group of at least seven citizens of said school district, shall grant the use of all school grounds and schoolhouses as community or recreation centers for the entertainment and education of the people, including the adults and children of school age, and for the discussion of all topics tending to the development of personal character and of civic welfare. Such occupation, however, shall not seriously infringe upon the original and necessary uses of such properties. The school board in charge of such buildings shall prescribe such rules and regulations for their occupancy and use as herein provided as will secure a fair, reasonable and impartial use of the same. The organization or group of citizens applying for the use of properties as specified above shall be responsible for any damage done them over and above the ordinary wear, and shall, if required, pay the actual expense incurred for janitor service, light and heat. Act 318 of 1917.

959. School District May Operate Recreation System.—Any school district may operate a system of public recreation and playgrounds, may vote a tax to provide funds for operating same, and may exercise all other powers enumerated in Section 158 of this Guide.

960. Rural Agricultural Schools.—The legislature of 1917 passed an act providing for the establishment of rural agricultural schools by consolidating three or more rural schools in any township or school district; for the organization of school districts in certain cases; for teaching agriculture, manual training and home economics therein, and providing state aid for the maintenance thereof. See Act 226 of 1917.

CHAPTER II.

TOWNSHIP SCHOOL DISTRICTS.

961. When Township to be Single School District.—Whenever a majority of the qualified school electors in any organized township votes in

favor of organizing said township into a single school district, such township shall, after the second Monday in July thereafter, be a single school district and shall be governed by the provisions of this act, and in case there are one or more graded school districts in the township having a population of nine hundred or less, the qualified school electors in such graded districts shall have the right to sign the petition hereinafter mentioned, and vote on the question of the establishment of such township district, and such graded districts shall become a part of the township district. The question of changing any organized township into a single school district to be governed by the provisions of this act, shall not be submitted to the qualified school electors of said township until a petition therefor, signed by one-fourth of the qualified school electors of such township, requesting the submission of such proposition, shall be filed in the office of the township clerk. § 5909. [See Form No. 57.]

UPPER PENINSULA: Act 176 of 1891, (§ § 5892-5907) provides for the organization of township school districts in the Upper Peninsula and is compiled in Chapter III of this Part. See Sections 985 to 1001 of this Guide.

962. Duty of Township Clerk and Township Board.—Upon the receipt and filing of such petition, it is the duty of the township clerk to call a meeting of the township board and it is the duty of the township board of such township to attend such meeting, which shall be held not more than five days after the filing of such petition. It is the duty of the township board at such meeting to consider the said petition with the names appearing thereon, and if it be found and determined that one-fourth of the qualified school electors of said township have signed the said petition requesting that the said township of which they are residents be organized as a single school district under the provisions of this act, the township board shall call an election at which the question of the organization of the said township into a single school district shall be submitted to the qualified school electors of the township. Such election shall be called by the township board within thirty days after the meeting of the township board at which it is determined that the petition herein provided for is sufficient; but if any such petition is determined to be sufficient not more than four months and not less than twenty days prior to the annual township election, such question shall be submitted at the annual township election. § 5909. [See Forms Nos. 58 and 59.]

963. Notice of Election.—Notice of such election, whether it be of a special or of the annual election, shall be given by the township board by posting notices thereof in at least five public places in the township and at least one notice in each organized school district in the township, which notice shall state that at such election, giving the date, the question of the organization of the township into a single school district shall be submitted to the qualified school electors of the township. § 5909. [See Form No. 59.]

964. Form of Ballot.—The ballots upon which such question shall be submitted shall be in the following form:

"Shall ..... township be organized into
Name of township.
a single school district?" [ ] "Yes."

"Shall ..... township be organized into
Name of township.
a single school district?" [ ] "No."

Each ballot which has a cross marked in the square to the left of the word "Yes" on any such ballot shall be counted in favor of the organization of such township into a single school district, and each ballot which has a cross marked in the square to the left of the word "No" shall be counted against the organization of such township into a single school district. § 5909.

965. Conduct of Elections.—Any such election shall be conducted by the township board of election inspectors in the same manner in all respects and the ballots shall be taken, counted and canvassed in the same manner that is now provided for the counting of ballots under the general election law. If a majority of the school electors of such township voting at such election votes in favor of the proposition, such township shall, after the second Monday of July subsequent to such election, be considered a single school district and shall be governed by the provisions of this act. § 5909.

NOTE: The act referred to is Act 117 of 1909, being § § 5909 to 5933, C. L. of 1915.

966. Election of Trustees.—Whenever a majority of the qualified school electors of any township votes in favor of the organization of any township into a single school district, it is the duty of the township board to call a township election for the second Monday of July, at which election the trustees for the township school district shall be elected by the qualified school electors of such township. Notice of such election shall be given by the township board by posting notices thereof in at least five public places in the township and at least one notice in each organized school district that on the second Monday of July following trustees for the township school district will be elected, and it is the duty of the township board of election inspectors of such township to conduct such first election and perform such duties in connection therewith as may be necessary to carry out the provisions of this act. § 5909. [See Form No. 60.]

967. Fractional Districts to be Considered Part of District.—If in such township, or as a part of such township, there are fractional school districts already organized, the schoolhouse of which is within the boundaries of the township, such fractional districts shall be considered a part of the township for school purposes, and qualified school electors residing anywhere in such fractional school district, shall be qualified to sign the petition for or vote upon the question of the organization of the township district. § 5909.

968. Board of Education to Have Control of Property.—The township board shall make and file, both with the county clerk and with the county commissioner of schools of the county in which such township is located, a certified copy of the above mentioned petition together with its findings and decision thereon, and when the trustees or district officers shall have been duly elected and shall have filed a written acceptance of office with the township clerk of such township and shall have complied with the general provisions of this act pertaining to the election and acceptance of school officers, the said board of education shall immediately become the custodian of all the property pertaining to the public schools of the township and shall have all the powers and privileges conferred upon school officers by the general laws of this State, and said general laws

shall apply and be in force in such district in all particulars not otherwise provided for in this act. § 5909.

969. Accounting of Property.—Immediately upon the organization of the board of education herein provided for, said board shall call a meeting of the officers of the school districts of the township as heretofore existing, if any, and at such meeting there shall be an accounting of the property, records and funds of such districts and a settlement of the same, and the officers of the several school districts of the township as heretofore existing shall immediately thereafter turn over to the said board of education all the books, records, money, property and other matter or material in their possession and belonging to the public schools of their respective districts to the township board of education, and said board shall give to such officers proper receipts, and the secretary of said board of education shall place a full statement of such several settlements in the records of the board of education for said township. § 5909.

970. Graded Districts of Over 900 Population May Become a Part of Township District.—All cities organized as school districts and all graded school districts having a population of more than nine hundred shall be exempt from the provision of this act. Their boundaries shall remain the same and they shall continue to administer the public schools of such city or graded district in the same manner as heretofore provided by statute. But if any such city or graded school district desires to give up its own organization as a school district and become a part of the township district, and such district and the other district or districts of the township shall respectively so express themselves by ballot by a majority vote of the legal voters of each district at an annual or special meeting of such districts, the superintendent of public instruction has authority to declare the organization of such city or graded school district for school purposes dissolved, and he shall make such declaration in writing and serve the same upon the officers of the township district and upon the officers of such city or graded district, and such officers shall immediately turn over to the board of education of such township all the buildings, property, appurtenances, money and material heretofore belonging to such city or graded district to the board of education of the township district, and thereafter such city or graded district shall be a part of the township district and controlled by the township board of education as herein provided. Id. § 5910.

971. Provisions Relative to Fractional Districts.—Where fractional school districts have been organized heretofore, the organization of the township district for school purposes shall conform to the boundaries of such school districts, and the said fractional districts shall become a part of the township district in which the schoolhouse of such district is located, and that in the election of school officers said boundaries shall be recognized by the officers of the township. In any case where a fractional district has been organized heretofore, such territory may be divided so that the township school district boundary lines shall conform to the township boundary lines, said division being made in their discretion by the township boards of the townships in which the territory may be located, said boards meeting in joint session for such purpose. When such division has been made, the township boards at said joint meeting shall immediately proceed to make an equitable division of the property

and money, if any, belonging to such district between the townships in which such district was located. The township clerk of the township in which the schoolhouse of such fractional school district is located shall give at least ten days' notice to the township clerk of the other townships interested of the time and place of such meeting, and each township clerk upon receiving such notice shall notify each member of the township board of his township of the time and place of such meeting. The joint meeting of the township boards when assembled shall elect from their number a chairman and a clerk, and a majority of the joint board shall be necessary to determine all questions submitted. The clerk of said joint board shall provide each township clerk with an exact record of the proceedings of said meeting. § 5910.

972. Board of Education of Township District.—The officers of said township district shall consist of five trustees elected at large who shall constitute the board of education of said district and a regular term of office shall be three years. Any qualified voter in the district whose name appears upon the assessment roll and who is the owner in his own right of the property so assessed, shall be eligible to election or appointment to office in such district: Provided, That where a husband and wife own property jointly, if otherwise qualified, each shall be eligible to election or appointment to school office. § 5911. As Am. by Act 304 of 1917.

973. First Meeting and Election of Trustees in Township District.—At the first election held on the second Monday of July under authority of this act, the qualified electors of the township shall proceed to elect by ballot one trustee for the term of one year, two for the term of two years and two for the term of three years, and annually thereafter a successor or successors to the trustee or trustees whose term or terms of office shall expire. The term of office intended for each person shall be designated on the ballot and which said ballot shall have printed thereon the names of all candidates and the offices to be voted therefor, together with instructions as to the method of voting: Provided, That to obtain the printing of the name of any candidate for any of said offices, said candidate shall file a nomination petition with the clerk of the school board not less than thirty days before election, which petition shall be signed by not less than twenty-five nor more than one hundred qualified electors of the school district and each petition shall recite the residence and occupation of the electors signing the same, together with the date of signature. At the first election and at all succeeding elections held in said township district, the township board shall act as a board of election inspectors and shall receive and canvass the votes, prepare ballots and conduct the election in the same manner as provided for in township elections held under the general law. The township clerk shall keep a record of all proceedings of said first meeting of the district and file a copy of the same in his office and turn over a copy of said proceedings to the secretary of the board of education when said board is organized. In election of trustees, the person or persons receiving the highest number of votes cast shall be declared elected and he or they shall hold office until his or their successor or successors shall have been duly elected and shall have qualified as provided in this act. § 5911. As Am. by Act 304 of 1917.

974. Qualifications of Voters.—In all school elections every citizen of the United States of the age of twenty-one years, male or female, who owns property which is assessed for school taxes in the township district or who is the parent or legal guardian of any child of school age included in the school census of said district, and who has resided in said township district three months next preceding such election, shall be a qualified voter. On the question of voting school taxes, every citizen of the United States of the age of twenty-one years, male or female, who owns property in fee, by contract or homestead right which is assessed for school taxes in the township district, and who has resided in the district as above stated shall be a qualified voter: Provided, That a husband and wife who own property jointly and which is assessed for school taxes in the school district may, if otherwise qualified, vote upon the question of raising money. § 5911. As Am. by Act 304 of 1917.

975. Annual Meeting of Township School District.—The annual meeting of a township school district shall occur on the second Monday of July in each year at the usual place of holding the township meeting and the school year shall commence on that day, notice of which shall be given by the secretary. At the first school meeting and at all succeeding annual meetings the polls shall open at ten o'clock a. m. and be kept open seven consecutive hours. A person offering to vote, being challenged, shall be tendered an oath. See § § 5912-5913, C. L. of 1915.

976. Town Clerk to Notify Trustees-Elect and File Acceptances.—Within five days after the first election under this act the township clerk shall notify in writing the persons elected as trustees of their election, and within five days thereafter said trustees so elected shall file with the township clerk a written acceptance of the office, accompanied by an affidavit properly acknowledged that such person is a qualified voter on school questions, that his name appears on the assessment roll of the township for school taxes, and that he is the owner in his own right of the property in fee, by contract or homestead right, so assessed, and such acceptances and affidavits shall be filed by the township clerk in his office. All persons elected as trustees of the township school district after said first election shall file such written acceptances and affidavits with the secretary of the board of education and they shall be made a part of the records of the district. § 5914.

977. Meeting and Organization of Board of Education.—The members of the board of education shall meet on the fourth Monday of July following the first election under this act, and at such meeting the trustee whose term of office first expires shall be temporary chairman, and at this meeting the trustees shall elect from their number a president, a secretary and a treasurer, who shall severally serve in such capacity during his term of office and until his successor shall have been duly elected and qualified. Immediately upon the organization of the board the secretary shall notify the county school commissioner and the superintendent of public instruction, giving the name and postoffice address of each officer. A majority of the members of the board shall constitute a quorum, and the board shall hold two regular meetings in each year, one on the fourth Monday of February and one on the Saturday preceding the second Monday in July, and no notice of such meetings shall be required. The trustees shall be allowed compensation for not to exceed

four special meetings which may be called by the president and secretary, and the secretary shall give at least twenty-four hours' written notice to each member of the board: Provided, That the provisions hereof with reference to number of meetings of board and compensation of trustees shall not apply to school districts having a school population of more than three hundred. All business which the board of education is authorized to perform shall be done at a meeting of said board, and no act shall be valid unless voted at a meeting of the board by an affirmative vote of a majority thereof and a proper record made of such vote. The minutes of all school meetings and board meetings must be signed by the secretary. § 5915. As Am. by Act 314 of 1917.

978. **Board of Education Shall Report School Taxes to Township Clerk.** —The board of education shall between the second Monday of July and the first Monday of August in each year, make out and deliver to the township clerk a report in writing, signed by the president and secretary, of all taxes for school purposes voted by the district and by the district board, to be levied on the taxable property of the district. § 5916.

979. **Annual Report to be Filed with Township Clerk.**—The secretary shall prepare an annual report stating such facts and statistics in regard to the schools and the subject of education as the superintendent of public instruction shall direct. Said report shall be in such form as said superintendent may prepare and direct. In all township districts one copy of said report shall be filed with the township clerk on or before the first Monday of August in each year, and the other two, together with all others, forwarded immediately after the first Monday in August to the county commissioner of schools. § 5919.

980. **Duties of Town Clerk as to Estimates of Taxes.**—The people have authority to increase or decrease the amount of the estimate submitted by the board and when such amounts have been voted by a majority of the qualified voters present the secretary of the board of education shall, on or before the first Monday of August, certify to the township clerk of the township the amount of such taxes, together with the amount of all taxes which the board of education is authorized to impose, and said township clerk shall report the same to the supervisor of the township, and if the township district is a fractional district said clerk shall report such taxes to the clerks of other townships in which said district may be in part situated, and such clerks shall report the amounts to their respective supervisors, who shall spread the same upon the regular tax roll of such township or townships in the manner provided for by statute, and the same shall be levied, collected and returned in the same manner as all township taxes: Provided, That if the qualified voters present as aforesaid do not or can not determine the amount of money to be raised by tax for the purposes specified, the board of education shall determine the same. § 5921.

981. **Taxes to be Set Forth in Separate Column.**—All taxes assessed within said township or township district for school purposes shall be set forth in the assessment roll of the proper township in a separate column, apart and distinct from all other township taxes. § 5922.

982. **Duties of Township Treasurer.**—The treasurer of the township shall at any time, on the written request of the board of education, report to said board the amount of school money in his hands and shall, on the

order of the secretary of the board countersigned by the president, pay to the treasurer of the board all or any of such moneys. The treasurer of the township shall collect from the treasurers of other townships in which the district may be in part located all school moneys belonging to such district on or before March first in each year and report the same to the township clerk. § 5923.

983. Township Officers Not Eligible as Trustees.—The several township officers shall be ineligible to election as members of the board of education during the term for which they were elected and any votes cast for such township officers for members of the board of education shall be void. § 5929.

984. Removal of Trustees from Office.—The superintendent of public instruction has power and is hereby required to remove from office, upon satisfactory proof and after at least ten days' notice to the party implicated, any trustee of any township school district who has illegally used or disposed of any of the public moneys entrusted to his charge, or who shall persistently and without sufficient cause refuse or neglect to discharge any of the duties of his office, and in case of such removal it is the duty of the state superintendent to record in the office of the township clerk of such township the resolution or order for such removal, and such record of such resolution or order so entered, or a certified copy thereof, shall be prima facie evidence in all courts and places of jurisdiction of the regularity of such proceedings for removal. § 5931.

CHAPTER III.

TOWNSHIP SCHOOL DISTRICTS IN THE UPPER PENINSULA.

985. Petition to Township Board.—Whenever the qualified electors of any organized township in the Upper Peninsula desire to become organized into a single school district, they may petition the township board to proceed as hereinafter provided for organizing a township school district. Such petition shall be signed by a majority of the electors of the township qualified to vote at school meetings and shall be filed in the office of the township clerk at least fifteen days prior to the first day of July. § 5892. [See Form No. 61.]

CONSTITUTIONALITY: This act is constitutional. It is within the power of the legislature to vest in the board of education of the new district discretion to determine the length of time schools shall be kept in any one year, beyond the constitutional requirement of three months, it being the same discretion now exercised by trustees of ordinary school districts. There is no constitutional objection to the provision that all school property within the limits of the township shall, by force of the act, become the property of its public schools, and that all the debts and liabilities of the primary districts of the township, as they existed prior to its incorporation under the act, shall become the debts and liabilities of the public schools of said township.—Perrizo v. Kesler, 93 / 280; Keweenaw Ass'n v. Sch. Dist., 98 / 441. The provision authorizing the township board and school inspectors to determine whether a majority of the qualified electors of the township have signed the petition, is sufficient.—Id. As to filing a certified copy of the petition, etc., with the county commissioner of schools, instead of with the secretary of the board of school inspectors, see Id. 284.

NOTE: This is Act 176 of 1891, "for the organization of township school districts in the Upper Peninsula." As to whether this act is superseded by Act 117 of 1909, "to provide for the organization of township school districts in the State of Michigan," *quaere*. The later act of 1909 is compiled in Chapter II of this Part. See Sections 961 to 984.

986. Clerk to Call Special Meeting of Township Board, Etc.—Upon the receipt and filing of said petition, the township clerk shall notify the members of the township board and the school inspectors of the township to attend a special meeting to be held not more than five days there-

after, at which meeting it is the duty of the board to compare the names signed to the petition with the names appearing on the list of registered voters qualified to vote at school meetings, and if it be found that a majority of the voters so qualified to vote have signed the petition that the organized township of which they are residents be organized as a single school district, the township board shall give notice by posting notices thereof in five public places in said township, that on the second Monday of July the officers will be elected for such school district. § 5892. [See Forms Nos. 62 and 63.]

987. When Township to Become Single School District, Etc.—The township board makes and files with the county clerk and also with the county commissioner of schools, of the county in which such township is located, a certified copy of the petition, together with its finding and doings thereon; and when the district officers shall have been duly elected and shall have filed their acceptance with the township clerk, such township shall become a single school district, subject to all the general laws of the State, so far as the same may be applicable, and having all the powers and privileges conferred upon graded school districts. And all the general provisions of law relating to common or primary schools apply to such districts, except such as are inconsistent with the provisions of this act. Immediately after the organization of the township district, the board of education may divide the township into such number of sub-districts as it may deem necessary for the accommodation of all children of school age therein, designating the same as follows: Sub-district number one, sub-district number two, etc. § 5892. [See Form No. 64.]

988. The Officers of District to be the Board of Education.—The officers of said district consist of five trustees, who constitute the board of education, and their term of office is three years. On the second Monday of July following the action of the township board, the qualified voters of the township shall proceed to elect from their number, by ballot, one trustee for the term of one year, two for the term of two years and two for the term of three years, and annually thereafter a successor or successors to the trustee or trustees whose term of office shall expire. The term for which the person voted for is intended shall be designated on the ballot. The qualifications of voters and the conditions of eligibility for office holding shall be the same as provided in the general school laws. At the first election held in said district, the township board shall act as a board of election, and shall canvass the votes in the same manner as votes for elective township officers are canvassed. At succeeding elections, the qualified voters present shall designate three qualified voters to act as a board of election and board of canvassers, who shall respectively take and subscribe the constitutional oath of office, which oath any member of the board of trustees may administer. In the election of trustees, persons receiving a majority of all the votes cast shall be declared elected, and they shall hold office until their successors have been duly elected and filed their acceptance. The annual meeting of said district shall occur on the second Monday of July in each year, at the usual place of holding the annual township meeting, and it is the duty of the secretary to give notice of all annual meetings and of any special meeting, by posting a written or printed notice thereof in at least five conspicuous places in the township, at least five days prior to the meeting. At the

first school meeting and all succeeding annual meetings, the polls shall open at three o'clock p. m. and be kept open four hours, during the last hour of which time the voters shall transact such business as may lawfully come before them. § 5893. [See Form No. 63.]

989. Notification of Election, Oath, and Term of Office.—Within five days after the first election under this act, the township clerk shall notify, in writing, the persons elected trustees of their election, and within five days thereafter said trustees so elected shall take and subscribe the oath of office prescribed by the constitution of this State, before any officer authorized to administer oaths, and file the same with the township clerk; but after the district has been organized, the members of the board of education shall file their acceptances with the secretary of the board. § 5894.

990. Organization of Board and Election of Officers.—The members of the board of education shall meet on the fourth Monday of July following the first election, and elect from their number a president, a secretary, and a treasurer, who shall severally serve in such capacity during his term of office and until his successor is duly elected and qualified. The president shall preside at all meetings of the district, and of the board, and perform such other duties as are required of a moderator in a primary school district. The secretary shall faithfully record all proceedings of annual and special meetings of the district and of all meetings of the board, receive and file all records, papers, and other documents belonging to the district, and perform such other duties as are required of the director in primary school districts. The treasurer must execute and file with the secretary, within ten days after his election or appointment, a bond in the full amount of money to come into his hands as such treasurer during his term of office, as near as the same can be ascertained, with two sufficient sureties who shall be residents of the same county, or shall furnish a similar bond of some surety company authorized to do business in this State, to be approved by the president and secretary of the board, conditioned for the faithful performance of his duties and honestly accounting for all moneys coming into his hands belonging to said district. It shall be his duty to apply for and receive from the township treasurer, or other officer holding the same, on the presentation of a warrant signed by the president and secretary of the school board, all moneys appropriated or apportioned for primary schools and for district library of said district. He shall have the keeping of all school and library moneys, and shall not pay out the same without the authority of the board, upon warrants or orders drawn upon him and signed by the secretary and countersigned by the president; and he shall perform such other duties as are required of the treasurer in primary school districts. § 5895.

991. Vacancy in Office of Trustee.—Said board of education has power to fill all vacancies that may occur in the office of trustee until the next annual election, and such trustee shall file with the secretary of said board his oath of office within five days after such appointment by the board. § 5896.

992. Quorum and Meetings of Board.—A majority of the members of said board constitute a quorum and the regular meetings of said board shall be held on the fourth Monday of March, June, September, and

December in each year. No notice of such meeting is required, and any two members of said board can adjourn any meeting from time to time, until a quorum is present. Special meetings of said board may be called at any time on the request of the president, or any two members, in writing, delivered to the secretary; and the secretary, upon receiving such request, shall at once notify each member of said board of the time of holding such meeting, which shall be at least two days subsequent to the time of receiving such request by said secretary; but in case all the members sign a waiver of notice on the minute book of the secretary, no notice is necessary. All records and papers of said district are to be kept in the custody of said secretary and be open to the inspection of any qualified voter of said district. § 5897.

NOTICE: It is essential that the notice of a special meeting be given as required by law. —Schafer v. School Dist., 116 / 206.

993. To be the Board of School Inspectors.—The said board is the board of school inspectors for the district and shall, as such, report to the clerk of the county in which such township is located, and shall have the same powers, and perform the same duties as boards of school inspectors; the secretary of said board shall perform all the duties required by law of the chairman of the board of school inspectors; and the board of school inspectors for such township is abolished, except as its powers are vested in such board of education. § 5898.

994. Authority of Board of Education.—The board of education has authority to designate and purchase schoolhouse sites, erect and furnish buildings, employ qualified teachers, provide books for district library, make by-laws for taking the census of all children in said district between the ages of five and twenty years, and to make and transmit all necessary reports to the officers designated by law, so that the district may be entitled to its proportion of the primary school interest fund; and the board has authority to make regulations and by-laws relative to the visitation of schools; the length of time school shall be kept, which shall not be less than five months in each year; the employment of teachers legally qualified; the regulation of schools and the books to be used therein; and, generally, to do all things needful and desirable for the maintenance, prosperity, and success of the schools of the district, and the promotion of a thorough education of the children thereof. When in any contiguous territory of said district there are ten or more children of school age, living not less than three, nor more than eight miles, from any schoolhouse in said district, the board of education shall, upon the petition of a majority of the parents or legal guardians of said children, provide school advantages for such children, either by establishing a sub-district, or by providing transportation to some school already established within the township. § 5899.

CONTRACT WITH TEACHER: The district board of a primary school district has power to contract with a qualified teacher for such term during the ensuing year as shall be determined by the qualified voters of the district at the annual meeting thereafter to be held.—Cleveland v. Amy, 88 / 374.

995. Of Taxes for all School Purposes.—At each annual school meeting, the qualified voters present shall determine the amount of money to be raised by tax for all school purposes for the ensuing year. In case the voters neglect or refuse to determine the amount to be raised as afore-

said, then the board of education shall determine the same at its first regular meeting, which amount the secretary shall, within thirty days, certify to the supervisor, who shall spread the same upon the regular tax roll of the township, and the same shall be levied, collected and returned in the same manner as other township taxes; but, for purchasing school lots and for erecting schoolhouses, no greater sum than three mills on the dollar of all the taxable valuation of the real and personal property in said township shall be levied in any one year. § 5900. [See Forms Nos. 65 and 66.]

ELECTORS MUST FIRST ACT: The wording of this statute is identical with the general law for raising highway money taxes. The board of education has no authority to act in raising money until the question has first been submitted to the electors and they refuse or neglect to raise the tax. Then the board of education may act. It is a question going to the jurisdiction of the board. Aud. Gen. v. Duluth, etc., Rd. Co., 116 / 124.

RECORDS: Records which simply show that the electors failed to determine the amount to be raised for school purposes but do not show that the electors neglected or refused to determine the amount, are insufficient to warrant the board of education in voting the necessary school tax.—Aud. Gen. v. Sparrow, 116 / 593.

996. School Taxes Assessed in Separate Column.—All taxes assessed within said township for school purposes shall be set forth in the assessment roll of said township, in a separate column, apart and distinct from all other township taxes. § 5901.

997. Reports of Township Treasurer and Board of Education.—The treasurer of the township shall, at any time, at the written request of the board of education, report the amount of school money in his hands, and shall, on the order of the secretary of the board, countersigned by the president, pay to the treasurer of said board, all or any of such money. § 5902.

998. Annual Statement of Board.—The said board shall annually, prior to the second Monday of July, make a detailed statement of the number of schools in said district, the number of teachers employed, the number of pupils instructed during the preceding year, the expenditures for all purposes, the resources and liabilities of the district, and also an estimate of the necessary expenses for the ensuing year, exclusive of the income from the primary school interest fund and one mill tax, which report or statement shall be entered at length in the record of said board and be publicly read by the president, or in his absence by the secretary thereof, to the voters of said township at their annual meeting on the second Monday of July. § 5903.

999. Compensation.—The compensation of the members of the board of education, other than the secretary and treasurer, is two dollars for attendance at each regular meeting of the board. The secretary and treasurer shall receive such compensation for their services as the board may determine, not exceeding one hundred dollars for the treasurer and one hundred twenty-five dollars for the secretary, per annum. § 5906.

1000. Division of District into Townships.—When any township district is divided into two or more townships, the existing board of trustees shall continue to act for all the townships, until the same shall have been organized, and the township boards of trustees duly elected and qualified. Immediately after such organization the township boards of education of the townships shall meet in joint session and direct an appraisal of all the school property of the former township to be made. When such appraisal has been made, said township boards of education

shall make an equitable division of the existing assets and liabilities of the school districts of such former township, basing their apportionment upon the amount of taxable property in the township divided, as shown by the last assessment roll of such former township. When a township district is altered in its limits by annexing a portion of its territory to another township or townships, the township boards of education of the townships shall, immediately after such alteration, meet in joint session and make an equitable division of the assets and liabilities of the school districts of the township from which the territory has been detached, basing their division upon the amount of taxable property, as the same shall appear upon the last assessment roll of such township. § 5907.

1001. School Property, Money, Etc.—All school property, both real and personal, within the limits of a township incorporated as aforesaid, by force of this act, becomes the property of the public schools of such township, and all debts and liabilities of the primary school districts of the township, as they existed prior to its incorporation under the provisions of this act, become the debts and liabilities of the public schools of the township so incorporated. All money, raised or being raised by tax, or accrued or accruing to the school districts of said township, as organized under the primary school laws of this State, become the money of the public schools of the township, and no tax ordered assessed or levied for school purposes in said township, or other proceedings, are invalidated or affected by means of this act. § § 5904, 5905.

CONSTITUTIONALITY: While the injustice and inequity of these provisions may well be admitted, in certain cases, yet there is no constitutional objection thereto.—Perrizo v. Kesler, 93 / 284; Keweenaw Association v. School District, 98 / 441.

PART XI.

TOWNSHIP FRUIT AND ORCHARD INSPECTORS.

1002. Unlawful to Keep or Sell Infected Trees or Fruit.—It is unlawful for any person or persons, firm or corporation, knowingly, to keep upon their premises, or upon premises under their control or charge, any trees or fruit infected with the diseases known as peach yellows, rosette, or little peach, or any part of a tree infected with the diseases known as black knot or pear blight, or any tree, shrub, plant or vine infected with any other dangerously contagious disease, or infested with San Jose scale, canker-worm or any other dangerously noxious insect pest. It is also unlawful for any person or persons, firm or corporation, knowingly, to sell or offer for sale, or to give away, any tree, shrub, plant, or vine, infected or infested with any dangerously infectious disease or noxious insect, or any fruit infected with peach yellows. § 7411.

1003. Township Board to Appoint Fruit and Orchard Inspectors.—In any township in this State, in which the insects known as the San Jose scale and canker-worm, or the diseases known as peach yellows, rosette, little peach, black knot and pear blight, or any other destructive insects or dangerously infectious diseases exist, or in which there is good reason to believe they exist, or danger may be apprehended of their introduction, it is the duty of the township board, as soon as such information becomes known to such board or any member thereof, to appoint three competent freeholders of said township, to be known as fruit and orchard inspectors, who shall hold office during the pleasure of said board. § 7423.

1004. Inspectors to File Acceptance.—It shall be the duty of said inspectors, within ten days after appointment, as aforesaid, to file their acceptance of the same with the clerk of said township, and said clerk shall be ex officio clerk of said board of fruit and orchard inspectors, and he shall keep a record of the proceedings of said board in a book to be provided for the purpose and shall file and preserve all papers pertaining to the duties and actions of said inspectors, or either of them, which shall be a part of the records of said township. § 7424.

1005. When Inspectors to Notify Owner to Remove and Destroy Trees.—It shall be the duty of the township inspectors, or any one of them, whenever it comes to their notice that any of the dangerously injurious insects or diseases, mentioned in section 1003 exist, or are supposed to exist, within the limits of their township to proceed without delay to examine the trees, shrubs, vines, plants or fruits, supposed to be infested or infected, and, if destructive insects or a dangerous infectious disease is found to exist, a distinguishing mark shall be placed upon the trees, shrubs, vines or plants, and a written notice shall be served upon the owner, or his agent. § 7425.

1006. **What Notice to Contain.**—The notice shall consist of a simple statement of the facts as found to exist, with an order to uproot and de-

stroy in such manner as may be indicated, all trees infected with yellows, little peach, or rosette, or to cut off and burn the portions infected with black knot and pear blight, or if attacked by San Jose scale or canker-worm, to effectually spray the trees, or to use such remedies as may be prescribed for other dangerous insects and diseases within five days, or such time from the date of the service of the notice as may be designated. § 7422. As Am. by Act 187 of 1917.

1007. **Appeal to Inspectors by Owner.**—In case the owner refuses to accept the opinion of a single inspector, regarding the nature of an insect or disease, or the remedy that shall be employed, he may, within two days, appeal to the other inspectors in the township by serving a written notice of such appeal upon each of them. Upon receipt of such notice of appeal, it shall be the duty of each and every inspector, if he has not already done so, to examine the trees, shrubs, plants or vines, supposed to be infested or infected, and if all or a majority of said inspectors agree that a dangerous insect or disease is present, they shall serve notice upon the owner or his agent as above. If the decision of the full board of inspectors is still unsatisfactory to the person in charge, he may, within twenty-four hours, make an appeal to the state inspector of orchards and nurseries, who shall at once investigate the matter and order the proper treatment, and his opinion and orders shall be final. If the members of a township board of fruit and tree inspectors are unable to agree, or are in doubt, regarding the nature of an insect or disease, or the treatment that should be given, they may call upon the state inspector of orchards and nurseries for information and advice. In cases where an owner appeals to the full board of township inspectors, or to the state inspector, and the findings of the original inspector are approved, the expense incurred as the result of the appeal shall be paid by the owner, and, in case of his refusal to do so, the amount shall be certified to the township board, which shall allow the same and assess it as a special tax upon the property. § 7425.

1008. **Proceedings in Case Owner Neglects to Comply.**—In case the owner, or the person in charge of trees, shrubs, vines, or plants, infested with a destructive insect, or a dangerously contagious disease, refuses or neglects to carry out the orders of the state inspector, or of the township inspectors, within the period stated in the notice served upon him, the State or township inspectors, respectively, shall employ such aid as may be necessary to carry out their orders and recommendations. In case the owner refuses to reimburse them for the expense incurred, it shall be certified to the township board, who shall allow it, and spread it as a special tax upon the property concerned. § 7426.

1009. **Authority to Enter Premises.**—The state inspector of orchards and nurseries and his deputies, assistants and employes, shall have authority to enter upon any premises in the State for the purpose of examining the trees, shrubs, plants and vines, for the presence of destructive insects and diseases, and if any such insects or diseases are found, may, under the provisions of this act, take steps as may be necessary to exterminate them. Township inspectors have the same authority within the limits of their respective jurisdiction. No damage shall be awarded for the destruction of any tree, shrub, plant or fruit, or for injury to the same, if done by the inspectors and their assistants in accordance with the provisions of this act, if it is deemed necessary in order to suppress dangerous insects and diseases. § 7427.

1010. **Compensation and Expenses of Inspectors.**—The township fruit and tree inspectors shall be allowed for services under this act three dollars for each full day and one dollar fifty cents for each half day, and their per diem and other charges and disbursements hereunder, shall be audited by the township board. § 7428.

1011. **Penalty for Violation of Act.**—Any person or persons, firm or corporation, who may fail to comply with any of the provisions of this act, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars and not exceeding one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than ninety days or both such fine and imprisonment, in the discretion of the court, and jurisdiction is hereby conferred in these cases upon any justice of the peace, or other competent court, of the township, village, or city, where such trees, shrubs or plants may be, or where such nursery stock or fruit is grown, sold, shipped, disposed of, or delivered, contrary to the provisions of this act. In all cases where a complaint is made under the provisions of any section of this act, by any State, township, village or city inspector, said complainant shall not be required to furnish security for costs. In construing and enforcing the provisions of this act, the act, omission or failure of any official, agent or other person acting for or employed by an association, partnership or corporation within the scope of his employment or office shall, in every case, also be deemed the act, omission or failure of such association, partnership or corporation, as well as that of the person. § 7430. As Am. by Act 187 of 1917.

PART XII.

THE SUPERVISOR.

CHAPTER I.—General Provisions.
CHAPTER II.—Valuation and Assessment.
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CHAPTER I.

GENERAL PROVISIONS OF LAW RELATING TO THE SUPERVISOR.

1012. Election, Eligibility, Qualification and Term of Office.—The provisions of law relating to the election, eligibility, qualification and term of office of supervisors have been compiled in Parts I and III of this Guide.

A supervisor of a township is not disqualified from holding the office of deputy sheriff, under Sec. 5, Art. 10 of the constitution, which provides that a sheriff shall hold no other office.—People v. Gosch, 82 / 22.

1013. Duties of Supervisor as a Member of the Several Boards.—For the provisions of law defining the powers and duties of the supervisor as a member of the township board, board of review, board of health, board of inspectors of election and board of registration, see the parts devoted to those subjects, respectively.

1014. Not Eligible to Offices of County Treasurer or Superintendent of the Poor.—No person holding the office of supervisor shall hold the office of county treasurer. § 2365.

No supervisor of any township shall be appointed to, or hold the office of superintendent of the poor. § 5223.

1015. Supervisor to be Assessor.—He shall, by virtue of his office, be an assessor of his township. § 2111.

1016. Supervisor to Notify County Clerk of Vacancy in Office of Treasurer or Justice.—The supervisor of any township, in which the office of a township treasurer or justice of the peace may become vacated by operation of this act, shall immediately transmit to the county clerk of the county in which such township treasurer or justice of the peace resides, a notice in writing, officially signed by him, informing the county clerk that the office of such township treasurer or justice of the peace is vacated. § 241. [See Form No. 16.]

1017. Supervisor's Clerk.—At the annual meeting in any township, where the assessed valuation of the taxable property therein exceeds two million dollars, the electors of such township, present at such meeting, may provide for the appointment, by the supervisor, of a clerk to assist him in his duties. Such clerk shall receive a compensation not to exceed two dollars and fifty cents for each day actually spent in the performance of his duties as such clerk, which compensation shall be paid from the general fund of the township as other township expenses are paid. § 2111.

1018. To be Agent of Township.—The supervisor of each township shall be the agent for his township, for the transaction of all legal business, by whom suits may be brought and defended. § 2115.

In suits or proceedings against townships, service may be made upon the supervisor or township clerk. § 12438.

In all ordinary cases, actions are to be brought by the supervisor.—Laketon Twp. v. Akeley, 74 / 695. The supervisor is the proper party to determine whether the township conceives itself aggrieved by a drain commissioner's assessment and desires to appeal.—Long v. Probate Judge, 130 / 338. Since taxes, when assessed, become at once a debt to the township, the supervisor may sue for this debt in the name of the township.—Decatur Twp. v. Copley, 133 / 547, citing Bangor Twp. v. Transportation Co., 112 / 601; Deerfield Twp. v. Harper, 115 / 678.

1019. Authority of Supervisor to Administer Oaths.—The supervisor of any township or ward is hereby authorized to place any person under oath on any of his statements made to said supervisor in his official capacity as supervisor, which oath the supervisor is hereby authorized to administer. § 2116.

1020. Dispute as to Improvement of Roads to be Decided by Supervisor.—In a township which has returned to the system of statute labor, in case of dispute between the commissioner of highways and any person interested in improvement of roads as to the manner of making the same, or the value of the work, the matter in dispute shall be submitted to the supervisor of the township, and his decision shall be final. See Sec. 1732 of this Guide.

1021. Approval of Official Bonds by Supervisor.—The law relating to the approval by the supervisor of official bonds and the sureties thereto, etc., is compiled in the chapters devoted to each officer respectively. He may approve the bond of the commissioner of highways, see Sec. 1435; of the constable, see Sec. 2016. The bond of the township clerk shall be filed with him, see Sec. 1236. He shall require a bond of the township treasurer and file and approve the same, see Sec. 1359; and shall, under certain circumstances, require the treasurer to give a new bond, see Sec. 1364. He may approve the bond of justices of the peace and shall endorse his approval thereon, see Sec. 1917 of this Guide.

1022. Supervisors to Preserve all Books, Papers, Etc.—The supervisor shall preserve and keep all books, assessment rolls, and other papers belonging to his office, in a safe and suitable place, but not in any saloon, restaurant, public inn, hotel, place of public amusement, nor in any place where intoxicating drinks of any kind are kept or sold, or where gaming or plays of chance of any kind are carried on, or where they will be exposed to unusual hazard from fire or theft, and he shall deliver the same on demand to his successor in office, and on application of any person he shall give certified copies of any such papers, or abstract from

any assessment roll, or books in his office; and for making any such copies or abstracts he is entitled to receive from the person applying therefor six cents for each folio; but no such copy or abstract and certificate shall be required for less than twelve and a half cents; and such certified copies or abstracts shall be presumptive evidence of the facts therein contained. § 2112.

1023. Supervisor May Make Complaint Against Juvenile Disorderly.—Upon the complaint upon oath and in writing made before any justice of the peace or other criminal magistrate by the supervisor of any township, knowing the facts of his own knowledge that any girl between the age of ten and seventeen years, or that any boy between the age of ten and sixteen years, has been guilty of any of the acts specified in Sec. 1 of this act, such justice or other criminal magistrate, shall issue a warrant for the arrest of such minor, and upon conviction such minor, if a boy, may be sentenced to the Industrial School for Boys at Lansing, and if a girl, to the Industrial Home for Girls at Adrian, boys until eighteen years of age, and girls until twenty-one years of age, unless sooner discharged according to law. But no person or persons shall be sent to the said Industrial School for Boys or to the Industrial Home for Girls until the sentence therein has been submitted to and approved by one of the judges of the recorder's court of the city of Detroit, or judge of the superior court of the city of Grand Rapids, or any circuit judge or probate judge of the county in which such conviction shall be had. § § 15577-78. See also § § 2011 and 2012, C. L. of 1915.

NOTE: The "section one of this act" referred to is § 15576, C. L. of 1915.

1024. To Attend Meeting of Board of Supervisors.—The supervisor of each township shall attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of such board of which he shall have notice. § 2113.

NOTE: The annual meeting is held on the second Monday of October. Special and adjourned meetings are held when necessary or convenient. A regular meeting may be held on the Tuesday following the second Monday of April. § 2265.

1025. To Lay Certain Papers Before Board.—Each supervisor shall lay before the board of supervisors such copies of entries concerning moneys voted to be raised in his township, as shall be delivered to him by the township clerk. § 2114.

1026. Compensation of Supervisor.—As a member of the township board, board of registration, board of health, board of review and board of inspectors of election, the supervisor is entitled to three dollars per day and at the same rate for parts of days. For taking the assessment and for all services not connected with the above boards, the supervisor is entitled to three dollars per day and at the same rate for parts of days. For various specific services the supervisor is allowed certain compensation which is stated in connection with the statement of the services required. See Secs. 282 and 1027 to 1031 of this Guide.

1027. Compensation for Attending Meetings of Board.—Every member of such board of supervisors shall be allowed a compensation of five dollars per day for his services in attending the meetings of said board in any county in which at any regular or special election a majority of the electors voting thereon shall favor the payment of such per diem

and in such counties only, and in all other counties such compensation shall be four dollars per day, and six cents a mile for each mile necessarily traveled in going to and returning from the place of such meeting: Provided, That no supervisor shall be allowed pay for more than one day for each twenty-four hours that the board of supervisors shall be in session: Provided further, That where a member of the board of supervisors in any county has to leave home the day before the meeting of the board in order to arrive at the place of meeting of said board in time for commencement of the session, and where members cannot get home the day the meeting adjourns, said members shall be allowed compensation at the authorized rate per day for time actually employed in going to and returning home from place of meeting of said board by the most direct and usually traveled route, to be audited by the board and paid by the county. § 2293.

1028. Limit of Time for Which Compensation May be Paid.—The compensation of five dollars per day shall extend to and be allowed for the first fifteen days only of any continuous regular October session, and three days only for any regular April session and one or more adjourned sessions, until the total number of days shall equal twenty-five, and for the first three days only of any special session of said board, of which special sessions there shall be no more than two in any one official year, which said amount shall be in full for all services rendered and expenses in attending the meeting of said board of supervisors: Provided, That in counties of less than forty thousand population the total number of days in any one year for which supervisors shall draw compensation for serving upon the board of supervisors shall not exceed twenty-four days. § 2293.

1029. Compensation of Supervisors as Members of Committees.—The board of supervisors is hereby authorized to fix the compensation of members of committees for services necessarily performed when the board of supervisors is not in session at not to exceed the amount herein authorized and actual traveling expenses for the time actually and necessarily employed and traveled by such members of committees while discharging the duties of any such committee: Provided further, That nothing herein contained shall be considered to authorize payment to members of committees of such board of compensation for the service as members of any such committees while said board of supervisors shall be in session; nor shall any member of any committee be entitled to payment under the provisions of this section for services performed as a member of any committee where the services performed were not ordered by the said board, nor for more than twenty days in any one year as member of such committee. § 2293.

1030. Penalty for Receiving Excess Compensation.—Any supervisor receiving further or other compensation for such services shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. § 2293.

1031. Not to Affect Certain Acts.—Nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work, or change the number of days allowed therein for regular or special sessions in any

one year. Said acts shall stand the same as if this act had not been passed. § 2293.

1032. Penalty for Neglect or Refusal to Perform Duties.—If any supervisor shall neglect or refuse to perform any of the duties which are, or shall be required of him by law, as a member of the board of supervisors, without just cause therefor, he shall for each offense forfeit one hundred dollars. § 2294.

1033. Supervisor to Appear on Appeal Under "Covert" Highway Law.—In case of appeal by a township from an assessment for highway improvements under the "Covert" Highway Law, the supervisor shall appear for his township, under the direction of the township board. See § 4711, C. L. of 1915, as amended by Act 125 of 1917.

CHAPTER II.

THE VALUATION OF PROPERTY AND ASSESSMENT OF TAXES.

1034. To be Assessor.—The supervisor shall, by virtue of his office, be an assessor of his township. § 2111.

1035. Supervisor to Make Assessment.—An assessment of all the property in the State, liable to taxation, shall be made annually in the several townships by the supervisors of the several townships, as hereinafter provided. § 4004.

1036. Property Subject to Taxation.—All property, real and personal, within the jurisdiction of this State, not expressly exempted, is subject to taxation. § 3995.

The authority to tax being fixed by the statutes must be strictly pursued.—Case v. Dean, 16 / 12. Standing timber is assessable as realty, being an interest in the land.—Fletcher v. Alcona Twp., 72 / 18; Williams v. Hyde, 98 / 152. But nursery stock is assessable as personal property.

Every essential proceeding in the assessment and levy of taxes must appear in some written and permanent form in the records of the officers authorized to act upon them.—Taymouth v. Koehler, 35 / 25.

The assessor cannot legislate. He has to do solely with administering the law.—Aud. Gen. v. Supervisors, 36 / 71. Township officers cannot ignore common sense and ordinary experience in discharging their duties.—Medina v. Perkins, 48 / 67.

1037. What Constitutes Real Property for the Purpose of Taxation.—For the purpose of taxation, real property includes all lands within the State, and all buildings and fixtures thereon, and appurtenances thereto, except such as are expressly exempted by law. § 3996.

Lands and real estate include all rights thereto and interests therein. § 64, C. L., 1915. Includes standing timber.—Sovereign v. Ortman, 47 / 181. And unsevered crops.—Coman v. Thompson, 47 / 22. Where land is owned by one person and buildings thereon by another the two are to be separately assessed.—Cooley on Taxation, 367. Private buildings on lands of the United States or this State are assessed as personal property. So are buildings on leased lands.

1038. Assessment of Real Property, Where and to Whom Made.—Real property shall be assessed in the township or place where situated, to the owner, if known, and also to the occupant, if any; if the owner be not known, and there be an occupant, then to such occupant, and either or both shall be liable for the taxes on said property, and if there be no owner or occupant known, then as unknown. A trustee, guardian, executor, administrator, assignee or agent, having control or possession of real property may be treated as the owner. § 3997.

A supervisor, when acting as assessor, is a quasi judicial officer, and in the exercise of his

judicial duties he cannot be held liable in a suit at law for errors he may have made but the injured party must resort to some direct proceeding for their correction.—Meade v. Haines, 81 / 261. A supervisor is not bound to take the statements of any person as to the ownership of land, nor as to the person to whom it should be assessed, but may exercise his best judgment in determining these questions.—Id.

1039. Assessment of Real Property Belonging to Deceased Person.—The real property which belonged to a person deceased not being in the control of an executor or administrator may be assessed to his heirs or devisees jointly, without naming them, until they shall have given notice of their respective names to the supervisor, and of the division of the estate. § 3997.

Where the statute permits the property of an estate to be assessed to the heirs or devisees without naming them, an assessment to the estate by name is, in legal effect, assessing it to unnamed heirs.—Dickison v. Reynolds, 48 / 161. But a supervisor who assesses land to the estate of a deceased person, after administration and the discharge of the executors, instead of to the devisees, whose names are easily ascertainable, not only neglects a plain duty but fails to assess the property in the way contemplated by the statute.—Fowler v. Campbell, 100 / 398.

1040. Assessment of Homestead Lands.—All licensed homestead lands, the fee of which is in the State, when the licensee is entitled to make final proof to obtain patent for the same, shall be assessed and treated as real property. § 3998.

1041. Assessment of Part-Paid State Lands.—The interest in land of any person holding part-paid certificates for the purchase of any State lands shall be assessed separate from other property. The assessment shall describe the land and shall state therein that the title is in the State. The taxes if not paid to the township treasurer, shall be returned and collected as hereinafter provided. § 3998.

It is the duty of the commissioner of the state land office, on the first day of October of each year, to prepare lists showing the descriptions of lands upon which taxes have been assessed for the current year while the lands were part-paid, but which had been patented by the State, and upon which taxes have not been paid, and forward the same to the supervisor of the township where the lands lie. § 4183.

It is the duty of the supervisor of the township, receiving such list, to re-assess the taxes therein reported upon the same land. § 4184.

1042. Supervisor to be Furnished List of Part-Paid and Homestead Lands.—The commissioner of the state land office shall, during the month of March in each year, furnish to the several county treasurers a list of all part-paid State lands, and also of all licensed homestead lands that have been licensed for a term of five years and over, and upon which patents have not been issued, together with the date of each license and the name of the licensee, in their counties respectively, and such treasurers shall, on or before the tenth day of April next thereafter, cause to be delivered to the supervisor of each township affected thereby an accurate description of all such lands in his township, with the names of the persons holding the same. § 4090.

1043. Real Property of a Corporation.—The real property of a corporation shall be assessed to the name of the corporation as to an individual, if known, in the township or place where situated, or it may be assessed to the occupant or to any authorized agent if so requested of the supervisor. § 3999.

1044. Undivided Interests of Tenants in Common.—Undivided interests in lands owned by tenants in common, not being co-partners, may be

assessed to the owners thereof, if so requested, and in the discretion of the supervisor. § 4000.

1045. Real Property Exempt From Taxation.—The following real property shall be exempt from taxation:

First. All public property belonging to the United States;

Second. All public property belonging to the State of Michigan, except licensed homestead lands, part-paid lands held under certificates and lands purchased at tax sales and still held by the State;

Third. Lands owned by any county, township, city, village or school district and buildings thereon, used for public purposes;

Fourth. Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions incorporated under the laws of this State, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated. Such exemption shall not apply to fraternal or secret societies, but all charitable homes of such societies shall be exempt;

Fifth. All houses of public worship with the land on which they stand, the furniture therein and all rights in the pews, and also any personage owned by any religious society of this State and occupied as such;

Sixth. All lands used exclusively as burial grounds and the rights of burial therein, and the tombs and monuments therein while reserved and in use for that purpose; but the stock of any corporation owning such burial grounds shall not be exempt;

Seventh. The real and personal property of persons who, in the opinion of the supervisor and board of review, by reason of poverty, are unable to contribute toward the public charges;

Eighth. The real property of corporations exempt under the laws of this State, by reason of paying specific taxes in lieu of all other taxes for the support of the State. The track, right of way, depot grounds and buildings, machine shops, rolling stock and all other property necessarily used in operating any railroad in this State belonging to any railroad company, shall henceforth be made exempt from taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages, and all lands owned or claimed by any such railroad company not adjoining the track of such company shall be subject to all taxes;

Ninth. Property owned exclusively by the state agricultural society or any county or district agricultural society, and used by any such society exclusively for fair purposes;

Tenth. All lands dedicated to the public and actually used as a park, and any monument ground or any armory belonging to any military organization, and not used for gain or any other purposes;

Eleventh. All real estate to the value of one thousand dollars used and owned as a homestead by any soldier or sailor of the federal government who served three months or more during the civil or Mexican war, and all real estate to the value of one thousand dollars used and owned as a homestead by any wife or widow of such soldier or sailor; but should such homestead exceed in value the sum of one thousand dollars it shall be exempt only to the amount of such sum. Any soldier or sailor or the wife or widow of any such soldier or sailor desiring to accept the benefits named in this section as to the exemption from taxation shall make and file with the supervisor or assessing officer an affi-

davit stating under oath that he was a soldier or sailor of the federal government during the civil or Mexican war for a period of not less than three months, and in case it be the wife or widow of a soldier or sailor making such application, such affidavit must state that she is the wife or widow of a soldier or sailor of the federal government at the present time, who served not less than three months as such soldier or sailor during the civil or Mexican war. The said affidavit shall be sworn to before said supervisor, assessing officer or any officer authorized to administer oaths and then filed by the said officer in his office and turned over to his successor, where the same shall be open to inspection. Any person making a false affidavit in any particular for the purpose of exemption from taxation shall be deemed to be guilty of the crime of perjury, and punished accordingly. This exemption shall not operate to relieve from the payment of taxes any of the persons hereinbefore enumerated who are the owners of taxable property of greater value than three thousand dollars. § 4001. See Sec. 1098.

1046. What Personal Property Includes for Taxation Purposes.—For the purposes of taxation, personal property shall include:

1. All moneys;
2. All annuities and royalties;
3. All goods, chattels and effects within the State;
4. All ships, boats and vessels and their appurtenances belonging to inhabitants of this State, whether at home or abroad;
5. All goods, chattels and effects belonging to inhabitants of this State, situate without this State, except that property actually and permanently invested in business in another state shall not be included;
6. All credits of every kind belonging to inhabitants of this State over and above the amounts respectively owed by them, whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State;
7. All shares in corporations organized under the laws of this State, when the property of such corporations is not exempt, or is not taxable to itself; or when the personal property is not taxed;
8. All shares in banks organized within this State under the laws of this State or of the United States, at their cash value, after deducting the assessed value of real property owned by and assessed to such banks, and the value of any buildings erected upon leased lands by any bank, when the value of such real property is also assessed to said bank;
9. All shares in foreign corporations, except national banks, owned by citizens of this State;
10. All interests owned by individuals in lands, the fee of which is in this State or the United States, except as herein otherwise provided;
11. All buildings and improvements situate upon leased lands, except where the value of the real property is also assessed to the lessee or owner of such buildings and improvements;
12. Tombs or vaults built within any burial ground, or kept for hire or rent, in whole or in part, and the stock of any corporation or association owning any such tombs, vaults or burial grounds;
13. All other personal property not herein enumerated and not especially exempted by law;
14. All nursery stock and trees while growing on any land or in preparation for replanting or in transit;

15. All produce, seeds and grain on hand stored in warehouse or mill, and in transit, owned within this State;

16. The personal property of all gas and coke companies, natural gas companies, electric light companies, water works companies, and hydraulic companies to be assessed in the township, village or city where the principal works are located. The mains, pipes and wires of such companies laid in or along roads, lanes, streets or alleys shall be assessed as personal property in the township, village or city where the same are laid or placed. The personal property of street railroad, plank road, cable or electric railroad or transportation companies, bridge companies, and all other companies not required to pay a specific tax to the State in lieu of all other taxes, shall be assessed in the township, village or city where its principal business office is situated, and the track, road or bridge of any such company shall be held to be personal property and may be assessed in the township, village or city where the same is located, used or laid. § 4002. As Am. by Act 8 of 1917.

"Credits" includes all bills and accounts receivable, deposits, mortgages, loans, etc. Indebtedness is only allowed as an offset against credits, such as bills and accounts receivable. —Att'y Gen. Op. 1899. Non-forfeitable and paid-up life insurance policies are not taxable. Money under the control of the person assessed is not a credit from which debts can be deducted.—Att'y Gen. Op. 1900. A library belonging to an individual is exempt from taxation. —Patterson v. Bd. of Review, 125 / 126.

The note or bond and the mortgage that secures it are to be considered as one property.—Att'y Gen. v. Supervisors, 71 / 16. Assessment of notes or mortgages should be at their true cash value and not at what they purport to secure.—Id. Pipes of a water company laid on its own lands from pumping works to source of supply and to the city supplied, are a part of the realty and assessable accordingly and in the township where situated.—Water Co. v. Frenchtown, 98 / 431.

1047. Personal Property Exempt from Taxation.—The following personal property shall be exempt from taxation, to wit:

First. The personal property of benevolent, charitable, educational and scientific institutions, incorporated under the laws of this State. Such exemptions shall not apply to secret or fraternal societies, but the personal property of all charitable homes of such societies shall be exempt;

Second. Of all library associations, circulating libraries, libraries of reference and reading rooms owned or supported by the public and not used for gain;

Third. Of all posts of the grand army of the republic, sons of vetreans' unions, and of the women's relief corps connected therewith, of all young men's Christian associations, and of women's Christian temperance union associations, young people's Christian unions, and other similar associations;

Fourth. Pensions receivable from the United States;

Fifth. So much of the debts due or to become due as shall equal the amount of bona fide and unconditional debts by the person owing;

Sixth. The property of Indians who are not citizens;

Seventh. The library, family pictures, school books, one sewing machine used and owned by each individual or family, and wearing apparel of every individual;

Eighth. Household furniture, provisions and fuel to the value of five hundred dollars to each household; but no person paying board shall be deemed a householder;

Ninth. The working tools of any mechanic not to exceed in value the sum of one hundred dollars;

Tenth. Of all fire engines and other implements used in extinguishing fires, owned or used by any organized or independent fire company;

Eleventh. All mules, horses and cattle not over one year old, all sheep and swine not over six months old, and all domesticated birds;

Twelfth. Personal property owned and used by any householder in connection with his business of the value of two hundred dollars. § 4003.

CONSTRUED: Held, that a piano was not "household goods, furniture or utensils" within the meaning of the statute exempting such property from execution.—Kehl v. Dunn, 102 / 581. Tools of a dentist come within the meaning of "mechanics' tools."—Maxon v. Perrott, 17 / 332.

1048. Assessment of Corporate Property.—All corporate property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. The place where its office is located in its articles of incorporation shall be deemed its residence. If its business is actually transacted at such office; but if it shall establish its principal office in any other place than the place named in its articles of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this act. If there be no principal office in this State, then at the place in this State where such corporation or agent transacts business. The property of corporations paying specific taxes shall be exempt as to the property covered by such taxation, except when otherwise provided by law. All other property of such corporation shall be taxed under this act (General Tax Law, § § 3995-4156, C. L. of 1915). § 4005.

In computing the taxable property of insurance companies organized under the laws of this State, the value of the real property on which a company pays taxes shall be deducted from its net assets above liabilities, as determined and shown by the last report of the commissioner of insurance, including in such liabilities the legal reserve required by the laws of this State, or the regulations of the insurance department, and the remainder shall be the personal property for which the company shall be assessed. § 4005.

CONSTRUED: A lot purchased by a plank road company, outside of and adjoining its right-of-way, upon which it has erected a residence for its toll gatekeeper, is exempt from ordinary taxation while used for that purpose.—Plank Road Co. v. Detroit, 81 / 562.

1049. Assessment of Copartnership Property.—For the purpose of assessing property and collecting taxes, a copartnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the assessment roll, if such property is owned or occupied by a copartnership, the firm name shall be used. A copartnership shall be deemed to reside in the township where its business is principally carried on. Each partner shall be liable for the whole tax. § 4006.

Partnership property may be assessed in the firm name after the death of one co-partner, if the business is continued in the firm name by the executor and surviving partner.—Blodgett v. Muskegon, 60 / 580. Where the property of a corporation was assessed in its name and that of its business manager in the alternative, the tax held to be legal and a valid claim against the property.—Michigan Dairy Co. v. McKinley, 70 / 574.

1050. Assessment of Personal Property of Non-Residents.—Personal property of non-residents of the State, and all forest products owned by residents or non-residents, or estates of deceased persons, shall be assessed in the township or ward where the same may be, to the person, persons or corporation having control of the premises, store, mill, dockyard, piling ground, place of storage or warehouse where such property is

situated in such township, on the second Monday of April of the year when the assessment is made, except that where such property is in transit to some place within the State it shall be assessed in such place, except that where [such] property is in transit to some place without the State it shall be assessed at the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof, and in case the transit of any such property is to be other than through any water course in or bordering on this State, then such assessment shall be made at the point where such property will naturally leave the State in the ordinary course of its transit; and such property so in transit to any place without the State shall be assessed to the owner or the person, persons or corporation in possession or control thereof, and in case such transit will pass said logs through the booms or sorting gaps or into the places of storage of any person, persons or corporation operating upon any such stream, then such property may be assessed to such person, persons or corporation; and the person, persons or corporation so assessed for any such property belonging to a non-resident of this State shall be entitled to recover from the owner of such property by a suit in attachment, garnishment or for money had and received, any amount which the person, persons or corporation so assessed are compelled to pay because of such assessment, and shall have a lien upon said property as security against loss or damage because of being so assessed for the property of another, and may retain possession of such property until such lien is satisfied; but the person, persons or corporation so assessed shall not be compelled to pay taxes on account of such assessment, unless the supervisor or assessing officer shall at the time of assessment serve notice in writing on the person, persons or corporation having control of the premises, store, mill, dockyard, piling ground, place, of storage or warehouse that such assessment will be made. Any owner or person interested in said property may secure the release of the same from such lien by giving to the person, persons or corporation so assessed a bond in an amount double the probable tax to be assessed thereon, but not less than the sum of two hundred dollars, with two sufficient sureties, conditioned for the payment of such tax by said owner or person interested, and the saving of the person, persons or corporation assessed from payment thereof, and from costs, damages and expenses on account of his non-payment, which bond as to amount and sufficiency of sureties shall be approved by the county clerk of the county in which the assessment is made. § 4008, Subd. 8.

1051. Assessment of Personal Property, Exceptions, Etc.—All personal property, except as hereinafter provided, shall be assessed to the owner in the township of which he is an inhabitant, on the second Monday of April of the year for which the assessment is made. § 4007.

The excepted cases referred to are as follows, viz.:

1. All goods and chattels situate in some township other than where the owner resides shall be assessed in the township where situate, and not elsewhere, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory or warehouse therein, for use in connection with such goods and chattels. The procuring of any such property to be manufactured upon contract shall be

deemed the hiring a mill or manufactory within the meaning of this section.

2. All animals kept throughout the year in some township other than where the owner resides shall be assessed to such owner or the person in possession in the township where kept.

3. All shares in banks shall be assessed to their owners in the township, village or city where the bank is located; but the shares owned by a person residing in the county where the bank is located shall be assessed in the township or city where he resides.

4. The personal property of minors under guardianship shall be assessed to the guardian in the township where he resides, and the personal property of every other person under guardianship shall be assessed to the guardian in the township where the ward resides.

5. The personal property belonging to the estates of deceased persons, in the hands of the executors, administrators or trustees, appointed under the last will and testament of such deceased person, or by any court of competent jurisdiction, shall be assessed to them in the township and in the school district where the deceased last dwelt, until they shall give notice to the supervisor or other assessing officer that the estate has been distributed to the legatees or beneficiaries or other persons entitled thereto. If such deceased was a non-resident of the State such property shall be assessed in the township where situated, to such executors, administrators or trustees, or to the person in possession.

6. Personal property under the control of a trustee or agent, whether a corporation or a natural person, may be assessed to such trustee or agent in the township where he resides, except as otherwise provided. Personal property mortgaged or pledged shall be deemed the property of the person in possession thereof and may be assessed to him.

7. All personal property of any person situated upon, also all buildings situated and being upon the lands of the United States or of this State, or upon the lands of any person, persons, firm, association or corporation, where the owner of such buildings or personal property is not the owner of the fee in such lands, and where such leaser or owner of such buildings or property has not bound himself to pay taxes on the real estate, shall be deemed personal property for the purposes of taxation and assessment, and shall be assessed as personal property, to the owner or occupant thereof, in the city, village or township in which such lands are situated, and such buildings shall be subject to sale for taxes in the same manner as herein provided for the sale of personal property, but it shall not be necessary to remove any such buildings for the purpose of sale. § 4008.

A tax assessor cannot be presumed to have personal knowledge of the private affairs of persons assessed unless they choose to furnish it; as, of the amount of debts due by the holder of bank stock subject to taxation.—First Nat. Bank v. St. Joseph, 46 / 526. Lumber that is brought to a railroad station for transit merely, and is kept there in piles for convenience of shipment upon grounds that are neither owned nor hired for that purpose, is not taxable at the place as property in storage.—Monroe v. Greenhoe, 54 / 9. Lumber upon the premises of the manufacturer and under a contract of sale to dealers whose place of business is elsewhere, is not taxable where it is, as if in a place of "storage," especially if anything remains to be done to complete the transfer to the purchasers.—Osterhout v. Jones, 54 / 228. Logs in camp are taxable where the camp is, if there is an office there and buildings for transacting the local business, receiving funds and making returns to headquarters.—Ryerson v. Muskegon, 57 / 383. A personal tax cannot be assessed against a non-resident; nor can his property be taxed unless it has an actual situs within the State, so as to be under the protection of its laws.—Graham v. Township of St. Joseph, 67 / 652. The title of personal property in possession of an officer at the time fixed by law for its assessement, under an attachment in favor of the owner's creditors, remains in such owner, to whom the property is legally assessable.—Kalkaska Twp. v. Fletcher, 81 / 446. Lumber piled in a

millyard at the place of its manufacture under a contract is taxable to the owner in the township where situated.—Gd. Rapids Bark Lumber Co. v. Inland Twp., 136 / 121.

1052. Assessment of Forest Products in Transit.—All forest products in transit on the second Monday in April in each year and thereafter found in the waters or streams of this State or on the banks or shores of any lake, pond or stream of this State, when the same is not at the place where it is to be manufactured, shall be held to have a place of destination at the sorting grounds of the rafting and driving agents or booming company nearest the mouth of the stream, unless the contrary shall be made to appear by the owner or party having the same in charge. But all lumber, logs, timber, lath, pickets, shingles, posts, cordwood, tanbark, telegraph or telephone poles, or railroad ties, that may be piled or left in any yard, railroad reserve, or in any shed, shall not be deemed in transit, but shall be assessed to the person or corporation having control of the yard, railroad reserve, shed or place of storage where the same may be situated at the time provided by law for taking such assessment. § 4009.

It shall be the duty of the supervisor of the township in which any such saw logs, timber, railroad ties, telegraph poles or tanbark, cut prior to the time of taking the annual assessment, may be banked or piled, or that may be in transit, to ascertain the amount of such property which may be or may have been in his township or assessment district at any time during the month of April in each year, liable to assessment, by actual view of the same, as far as practicable, and to fix the value of such property, and to assess the same to the owner thereof as herein provided. § 4010.

Where forest products are on banks or shore, and not at place of manufacture, destination is at sorting grounds unless owner makes contrary to appear.—Elk Rapids Iron Co. v. Township of Helena; Same v. Township of Milton, 117 / 211.

Logs banked into a stream, and only waiting time of high water to be floated to destination or sorting grounds, and which are treated by the owners as in transit do not fall within the provisions as to lumber and logs piled or left in yard, shed or any other place in the township where the same may be at the time for assessment.—Corning v. Masonville, 74 / 177. Further as to forest products in transit, see Boyce v. Cutter, 70 / 539.

An assessment made on property which is not assessable is void, as on logs in transit and so known to the assessor and assessable at place of destination.—Brooks v. Township of Arenac, 71 / 231.

Logs piled on the right-of-way of a private railroad owned and used by a firm engaged in the lumber business are assessable in the township where they are located at the time provided by law for taking the assessment. Logs floating in a lake, so that at the time fixed by law for assessment they were in different townships but were all intended for use at a certain saw mill were properly assessed in the township where the mill was located.—Mitchell v. Lake Twp., 126 / 367.

1053. Assessment Not Affected by Change of Location.—No change of location or sale of any personal property, after the first day of May in any one year shall affect the assessment made in such year. As between school districts and road districts the location of personal property for taxation shall be determined by the same rules as between assessment districts. Whenever the owner or occupant shall reside upon contiguous tracts or parcels of land which lie in two or more assessment districts, then the personal property of such owner or occupant shall be assessed in the assessment district where such owner or occupant resides at the time the assessment is made. § 4011.

1054. When Supervisor to Ascertain Taxable Property, Etc.—It is the duty of each supervisor or other assessing officer, as soon as possible after entering upon the duties of his office, or as may be directed and required by the provisions of any acts of incorporation of any city or village making special provision for such assessment, to ascertain the taxable property of his assessing district, and the persons to whom it should be assessed and their residences. § 4012.

1055. Supervisor to Require Detailed Statement of Property, Etc.—For this purpose he shall require every person of full age and sound mind who the supervisor or assessor believes has property which is not exempt from taxation, to make and subscribe to a true and correct written statement, under oath, administered by such supervisor or assessing officer, or other officer qualified to administer oaths under the laws of this State, of all the taxable property of such person, firm or corporation, whether owned by him or it or held for the use of another, and it shall be the duty of every such person, firm or corporation, to make such statement under the following form of oath, duly administered by the supervisor or assessing officer:

STATE OF MICHIGAN, } ss.
County of..... }

————————, being duly sworn, deposes and says that the above is a full and true statement of all the taxable property owned by him liable to assessment in this assessing district.

(Signed)————————

Dated this ———— day of ————, A. D. 19—.

Subscribed and sworn to before me this ———— day of ————, A. D. 19—.

————————
Supervisor (or assessor).

Provided, That any person having no property which is not exempt, if required to take an oath by the supervisor or assessor, may take the following oath:

STATE OF MICHIGAN, } ss.
County of..... }

————————, being duly sworn, deposes and says that he has no property or effects liable to taxation.

Dated this ———— day of ————, A. D. 19—.

(Signed)————————

Subscribed and sworn to before me this ———— day of ————, A. D. 19—.

————————
Supervisor (or assessor).

§ 4012.

The provision, making it the duty of each supervisor to require every person of full age and sound mind in his township to make, subscribe, and verify a statement of the taxable property owned by him or held by him for the use of another, is mandatory.—Turner v. Circuit Judge, 95 / 1. The supervisor need not visit personally such persons, and demand the making and verifying of said statements; the statute being complied with if he mails to them, as far as known to him, blank statements, with a notice to appear before him and verify the same.—Id.

1056. Form of Statements for Bankers and Brokers.—In taking such assessment the supervisor or assessor shall use one of the following blank forms, as may be necessary:

Property of bankers and brokers.—The principal or accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker or stock jobber shall make out and deliver to the assessor a statement which he shall verify by oath, showing:

1. The amount of money on hand and in transit.

2. The amount of funds in the hands of other bankers, brokers or other persons, subject to draft.

3. The amount of checks and other cash items not included in either of the preceding items.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due.

5. The amount of bonds and stocks of every kind, except United States bonds, and shares of capital stock of corporations or companies, held as an investment or in any way representing assets.

6. All other property appertaining to said business other than real estate.

7. The amount of all deposits made with them by other parties.

8. The amount of all accounts payable, other than current deposit accounts.

9. The description and value of all real estate owned by him or them.

The aggregate amounts of the seventh and eighth items shall be deducted from the aggregate amounts of the first, second, third and fourth items, and the remainder, if any, shall be assessed as moneys. The amount of the fifth item shall be assessd as stocks and bonds, and the sixth item shall be assessed the same as other similar property, and the assessor shall make a separate entry of each of these amounts, separate from the assessment of real estate, and the whole shall make up the aggregate personal assessment of such person, party or corporation. § 4013.

1057. Form of Statements for Pawnbrokers.—Every person or company engaged in the business of receiving property in pledge or as security for money or other consideration or thing advanced to pawner or pledger, shall be held to be a pawnbroker and shall be required to make a statement and return under oath, reciting:

1. The value of all stock in trade actually owned by him or them and the true cash value thereof.

2. The amount and value of all property held in pawn for any pawner, pledger or customer.

3. The aggregate amount of money consideration or value paid and advanced by such pawnbroker thereon.

And the amount of the true cash value of all such property, less the amount of consideration or value paid, shall be assessed as the property of such person or corporation. § 4013.

1058. Form of Statement for Officers of Companies.—Property of companies.—The president, secretary or principal accounting officer of any company or association, incorporated or unincorporated, except railroad, insurance and telegraph companies and banking corporations, the taxation of which is specifically provided for by law, shall make out and deliver to the assessor a sworn statement setting forth the following:

1. The name and location of the company, corporation or association.

2. The amount of capital stock authorized and the number of shares into which the same is divided.

3. The amount of capital actually paid in.

4. The market value of the stock, or, if they have no market value, then the actual value of the shares of stock.

5. The cash value of all its personal property, giving each kind separately as far as practicable.

6. The total of all bona fide indebtedness, except indebtedness for current expenses, excluding from such expenses all amounts paid for the purchase or betterment of said property.

7. The description and value of all real property.

The amount of the seventh item shall be deducted from the amount of the fourth item, and the balance, if any, assessed as the cash value of the personal estate. The amount of the sixth item shall be deducted from the amount of the fifth item, and the balance, if any, assessed as personal. § 4013.

NOTE: The method provided by this section (§ 4013, C. L. of 1915) for the assessment of corporate property, *i. e.*, by deducting the value of the real estate from the market value of the stock, and the indebtedness from the cash value of the personal property, and assessing as personalty the balances so found, is unconstitutional and void as lacking uniformity with the usual methods, and as providing for double taxation. The failure of the special method prescribed by this section does not relieve the property of corporations from taxation, but renders it taxable under § 4002, C. L. of 1915 (section 1046), providing for the taxation of personal property in general.—Citizens' St. R. Co. v. Common Council of Detroit, 125 / 673.

1059. Form of Statement for Vessel and Marine Property.—Vessel and marine property.—The president, secretary or principal owner of all navigation or transportation companies, and each and every owner of any vessel, steamboat, wharf boat, barge or water craft, shall make out and deliver to the assessor a sworn statement setting forth:

1. The name of the company.
2. The location of its principal office.
3. The amount of capital stock paid in.
4. The cash value of such stock.
5. The name of each and every boat or vessel owned by such company or individual, with its insurance rate and value.
6. The value of all other personal property used and belonging therewith or thereto.
7. The actual bona fide indebtedness upon every such boat or vessel separately.
8. The value of all real property owned by such company or person, with a description of the same, if in his assessing district.
9. The value of all franchises, slips or docks owned or used by such company or person.

The actual value of all such property, after deducting the amount of the seventh item, shall be deemed the assessable value of such property. § 4013.

1060. Proceedings on Refusal to Make Statements.—In case of the refusal of the president, secretary, principal accounting officer or owner hereinbefore mentioned to make the statement or statements hereinbefore recited and required, the prosecuting attorney shall cause such person, on complaint of such assessing officer, to appear forthwith before a circuit court commissioner, who is hereby authorized to issue summons therefor and to order its service and to compel the attendance of said officer or person in obedience to such summons, and to examine them under oath, and make such investigation at the expense of such bank, corporation or person as may enable such commissioner and assessing officer to obtain the information provided for in this section. § 4013.

1061. Statement of Property to be Delivered to Supervisor.—Every owner of property liable to taxation under the provisions of this act, being of full age and sound mind, who is a resident of this State, shall make out and deliver to the supervisor or assessor on demand, a sworn statement of all the property, owned or held by him, as follows:

Real Property.

An accurate description of each parcel of land, with the number of acres contained therein.

Personal Property—Credits.

1. All annuities and royalties.
2. All credits of every kind owing to such person, whether such indebtedness is due from individuals or from corporations, public or private, and whether debtors reside within or without this State, including all deposits in banks or with other corporations or individuals, together with a statement of any part thereof that is secured by real estate mortgage on lands situated in some other state.
3. All bona fide indebtedness, owing by such person, giving an itemized statement in detail, how secured, and to whom owing, and the residence of such creditors and the amount due each, provided he desires to have the same deducted from his credits.

Personal Property—Chattels.

1. All shares in banks organized in this State under any law of this State or of the United States, and their cash value after deducting the value of the real estate taxed to banks.
2. All shares in foreign corporations, except national banks, and their cash value.
3. All shares in other corporations organized under the laws of this State when the property of such corporation is not exempt, or is not taxable to itself, and their cash value.
4. All moneys.
5. The value of all gold and silver plate, watches, diamonds and jewelry.
6. The value of all household furniture, over and above exemptions.
7. The number and value of all billiard tables and other personal property used in connection therewith, and all other similar property owned or in possession by him.
8. All patent rights and their value.
9. The number and kinds of domestic animals not exempt, and their value.
10. All carriages and other vehicles, and sleighs kept for pleasure or hire, and their value.
11. All mechanical and agricultural implements and tools, and their value.
12. All machinery not affixed to real property, and its value.
13. All ships, boats and vessels, whether at home or abroad, and their value.
14. All merchandise and stock in trade, including grain in elevators, and its value.

15. All logs, timber, lumber, posts and ties, and their value, where the same is situate on the second Monday in April, as near as may be, and the distinctive marks thereon, if any, and the place of destination in this State.

16. All other goods, chattels and personal property not heretofore specifically mentioned, and their value, except property specifically exempt from taxation.

17. All goods and chattels which are exempt from taxation.

18. All moneys or other personal property held as assignee, attorney, executor, guardian or agent, liable to taxation under the laws of this State.

19. The number of dogs of all kinds over three months old.

20. The value of all elevators, warehouses and improvements on lands, the title to which is vested in any railroad corporation, and the value of the contents. § 4013.

1062. When Statements are Deficient.—The supervisor or assessor shall not accept any of the statements herein above required as final or sufficient when such statement is not properly subscribed and sworn to, but shall preserve the same as in other cases, and such statement may be used in making the assessment and as evidence in any proceeding which may arise respecting the making of the assessment of the party furnishing such statement. § 4014.

1063. When Person Neglects or Refuses to Make Statement.—In every case when any person or member of any firm, or officer of any corporation, wilfully neglects or refuses to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer, or members of the board of state tax commissioners or other officers, or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court. And it is the duty of the supervisor, assessing officer, and each member of the board of state tax commissioners whenever he is satisfied that any person liable to make such assessing statement is justly liable to such penalty, to report the case to the prosecuting attorney of the county and make proper complaint for such prosecution. § 4015.

1064. When Statement is Incorrect or Cannot be Obtained.—If the supervisor or assessing officer, or a member of the board of state tax commissioners shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement cannot be obtained from the person, firm or corporation whose property is so assessed, said supervisor, assessing officer or any member of the board of state tax commissioners is hereby authorized and required to examine, on oath, to be administered by any of them, any other person or persons who he may have good reason to believe, and does believe, has knowledge of the amount or value of any property owned, held or controlled by such person so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby

authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just. § 4016.

1065. Statements to be Filed and Presented to the Board of Review.—All statements herein required to be made and received by the supervisor or assessor shall be filed by him, and shall be presented to the board of review, for the use of said board, and after the assessment is reviewed and completed by such board of review, all of the statements shall be deposited in the office of the township or city clerk, as the case may be, and shall be preserved until after the next assessment is made and completed, after which they may be destroyed upon the order of the township board or city or village council, but no such statement shall be used for any other purpose except the making of an assessment for taxes as herein provided, or for enforcing the provisions of this act, and any officer or person who shall make or allow to be made, wilfully or knowingly, any other or unlawful use of any such statement, shall be liable to the person making such statement for all damages resulting from such unauthorized or unlawful use of such statement. § 4017.

1066. Time and Manner of Making Assessment Roll.—On or before the first Monday of June in each year, the supervisor or assessor shall make and complete an assessment roll, upon which he shall set down the name of every person liable to be taxed in his township or assessment district, with a full description of all the real property therein liable to be taxed. If the name of the owner or occupant of any such tract or parcel of real property is known, he shall enter the name of such owner or occupant, as in this act provided, opposite to the description thereof; in all other cases the real property described upon such roll shall be assessed as "owner unknown." All contiguous subdivisions of any section that are of equal value and are owned and occupied by one person, firm or corporation, and all unimproved lots in any block that are of equal value and are contiguous and owned and occupied by one person, firm or corporation shall be assessed as one parcel, unless demand in writing is made by the owner or occupant to have each subdivision of the section or each lot assessed separately; but failure to assess such contiguous parcels as entireties as herein provided shall not invalidate the assessment as made. Each description shall show as near as may be the number of acres contained in it, as determined by the supervisor. It shall not be necessary for the assessment roll to specify the quantity of land comprised in any town, city or village lot. The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and set the same down opposite such parcel. He shall also estimate the true cash value of all the personal property of each person, and set the same down opposite the name of such person. In determining the property to be assessed and in estimating such value, he shall not be bound to follow the statements of any person, but shall exercise his best judgment. Property assessed to one other than the owner shall be assessed separate from his property and shall show in what capacity it is assessed to him, whether as agent, guardian or otherwise. Two or more persons not being co-partners, owning personal property in common, may each be assessed severally for his portion thereof. Undivided interests in lands owned by tenants

in common, or joint tenants not being co-partners, may be assessed to the owners thereof. § 4018.

1067. How Real Property to be Described.—The description of real property may be as follows, viz.:

1. If the land to be assessed be an entire section, it may be described by the number of the section, township and range;

2. If the tract be the subdivision of a section authorized by the United States for the sale of public lands, it may be described by the designation of such subdivision, with the number of the section, township and range;

3. If the tract be less or other than such subdivision, it may be described as a distinct part of such subdivision, or in such manner as will definitely describe the same;

4. In case of land platted or laid out as a town, city or village, or as an addition to a town, city or village, the same may be described by reference to such plat and by the number of the lots and blocks thereof;

5. When two or more parcels of land adjoin and are used and occupied together, they may be assessed by one valuation;

6. It shall be sufficient to describe the real property assessed upon any roll and in all other proceedings under this act in the manner heretofore in use by initials, letters, abbreviations, and figures. § 4019.

NOTE: In making the assessment roll it is important to correctly describe property, as the county treasurer must reject any tax upon lands erroneously or defectively described.

1068. How Personal Property Described.—The description of personal property on said roll may be made by using the word "personal," except in cases heretofore mentioned, or in the assessing of any dog tax authorized by law, in which case the kind of property assessed shall be properly designated upon the roll. § 4020.

1069. The Words "Cash Value" Defined.—The words "cash value," whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. In determining the value the assessor shall also consider the advantages and disadvantages of location, quality of soil, quantity and value of standing timber, water power and privileges, mines, minerals, quarries or other valuable deposits known to be available therein, and their value. § 4021.

MORTGAGE: A mortgage is not necessarily to be assessed at its face value. The supervisor must ascertain, according to his best information, its true cash value, etc.—People v. Supervisors, 71 / 16.

1070. Supervisor to be Member of Board of Review.—The supervisor and two electors elected as members thereof constitute the board of review. See Sec. 793 of this Guide.

1071. Supervisor Shall Submit Tax Roll to Board of Review.—The board of review shall meet at the office of the supervisor on the Tuesday next following the third Monday in May, at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him. § 4023. See Sec. 796 of this Guide.

1072. Duties of Supervisor as Member of Board of Review.—The provisions of law relating to the board of review and prescribing the duties of the supervisor as a member of such board, are compiled in Part VIII of this Guide. See Secs. 793 to 803 of this Guide.

1073. Supervisor to Deliver Copies of Statements and Certificates to County Clerk.—It shall be the duty of the township clerk of each township, on or before the first day of October of each year, to make and deliver to the supervisor of his township, a certified copy of all statements and certificates on file, and of all records of any vote or resolution in his office authorizing or directing moneys to be raised therein by taxation for township, school, highway, drain, and all other purposes, together with a statement of the aggregate amount thereof, and such certified copies shall, by such supervisor, be delivered to the clerk of the county on or before the second Monday of said month, and same shall, by said clerk, be laid before the board of supervisors at its annual meeting and filed in his office. § 4030.

For similar provision, see § 4492, C. L. of 1915.

CERTIFICATE: The information contained in this certificate is not for the use of the supervisor but for the board of supervisors who act upon the certificate. It can be executed and delivered by the clerk after the first Monday if it is in time for the second Monday in October. Peninsular Iron, etc., Co. v. Crystal Falls, 60 / 520; see also Jenney v. Township of Mussey, 121 / 232.

If a township tax was authorized by competent authority in the first instance the want of a certificate by the township clerk to the board of supervisors will not invalidate a tax duly directed to be raised. Auditor General v. McArthur, 87 / 462.

The failure of the township clerk to aggregate the several township taxes to be raised in his township in his certificate filed with the board of supervisors, is unimportant if the items are given.—Boyce v. Auditor General, 90 / 322.

TOWNSHIP BOARD: As to the authority and action of the township board in raising money by taxation, see Section 688 of this Guide, and notes.

1074. Equalization of Assessment Rolls.—The board of supervisors in each county shall, at their session in October in each year, examine the assessment rolls of the several townships, wards or cities, and ascertain whether the relative valuation of the real property in the respective townships, wards or cities has been equally and uniformly estimated. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward or city, or townships, wards or cities, such an amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the county, and the amount added to or deducted from the valuations in any township, ward or city, shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward, or city in their county as determined by them. The board shall also make such alterations in the description of any lands upon such rolls as may be necessary to render such description conformable to the requirements of this act. § 4028.

1075. Supervisor to File and Keep Assessment Roll in His Office.—After the assessment rolls have been equalized, each shall be certified to by the chairman and clerk of the board of supervisors and be delivered to the supervisor of the proper township, ward, or city, who shall file and keep the same in his office. § 4028.

1076. Appeal by Supervisor and Action on Appeal.—Any supervisor of any township or city who considers his township or city aggrieved by the action of the board of supervisors of which he is a member, in equalizing the valuations of the several townships, wards or cities of the county, may appeal from such determination to the board of state tax commissioners in the manner herein provided. Whenever any such supervisor

desires to appeal from such determination by the board of supervisors, he shall, within five days after such determination is made or within five days after adjournment of the board of supervisors, file a written or printed petition which shall set forth in detail his reasons for taking such appeal, with the clerk of the said board of supervisors. The said petition shall be signed and sworn to by the supervisor taking the appeal; shall show that the equalization as made by the said board of supervisors was objected to by certain members thereof; that a certain township, ward or city, as the case may be, has been discriminated against in such equalization, and shall pray that said board of state tax commissioners proceed at its earliest convenience to review the action from which appeal is taken. It shall be the duty of the clerk of the board of supervisors to forthwith serve such petition personally or by registered mail upon the board of state tax commissioners. The said board of state tax commissioners shall, upon receipt of such petition, forthwith examine same, and, if in its judgment there is a showing to the effect that the equalization complained of is unfair, unjust, inequitable or discriminatory, may proceed at once to investigate and pass upon complaints relative to the assessment and taxation of property, and the action of the said board of supervisors in connection with the equalization and valuation of said county. The said board of state tax commissioners shall have the same authority to consider and pass upon the action and determination of the said board of supervisors in equalizing said valuations as it has to consider complaints relative to the assessment and taxation of property. The said board of state tax commissioners shall have the right to order the said board of supervisors to reconvene and to cause the assessment rolls of said county to be brought before it, and it may summon the several supervisors of said county before it to give evidence in relation to said equalization, and may take such further action and may make such further investigation in the premises as it may deem necessary. If the said board of state tax commissioners shall decide that the determination and equalization made by the board of supervisors is correct, no further action shall be taken. If the said board of state tax commissioners, after due consideration, decides that the valuations of said county have been improperly equalized, it shall proceed to make such deductions from, or additions to, the valuations of the respective townships, wards or cities as may be deemed proper, and in so doing the said board shall have the same powers as the board of supervisors had in the first instance. It shall be the duty of the said board of state tax commissioners forthwith, after completing its revision of the equalization of the valuation of the several assessment districts, to report its action to the board of supervisors by filing its report with the clerk of the board of supervisors. The action of the said board of state tax commissioners in the premises shall be final and binding upon the said board of supervisors. Upon receipt of such report from the board of state tax commissioners, it shall be the duty of the clerk of the board of supervisors to forthwith call a meeting of the board of supervisors, which shall not be less than three days nor more than five days after the said report of the board of state tax commissioners is filed. Notice of such meeting shall be given to each supervisor by service of a copy of the call either personally or by registered mail, as the said clerk shall determine. As soon as the said board of supervisors has reconvened, it shall immediately proceed to apportion the State

and county taxes to the several assessing districts in accordance with the equalization so made: Provided, That if the board of supervisors is in session at the time the report of the board of state tax commissioners is filed, it shall be the duty of said clerk to deliver the said report to the said board of supervisors, which shall equalize the county in the manner indicated in said report: Provided, further, That the said board of state tax commissioners shall not, upon petition filed under the provisions of this act, increase the aggregate valuation of said county. § 4028.

1076a. Board of Supervisors to Apportion Taxes.—The board of supervisors, at its annual session in October in each year, shall ascertain and determine the amount of money to be raised for county purposes, and shall apportion such amount, and also the amount of the state tax and indebtedness of the county to the State among the several townships in the county in proportion to the valuation of the taxable property therein, real and personal, as determined by it, or as determined by the board of state tax commissioners upon appeal in the manner provided by law, for that year, which determination and apportionment shall be entered at large on its records. It shall also examine all certificates, statements, papers and records submitted to it, showing the moneys to be raised in the several townships for school, highway, drain, township and other purposes. It shall hear and duly consider all objections made to raising any such moneys by any taxpayer to be affected thereby. If it shall appear to the board that any certificate, statement, paper or record is not properly certified, or that the same is in anywise defective, or that any proceeding to authorize the raising of any such moneys has not been had or is in anywise imperfect, and such certificate, statement, paper, record or proceeding can then be corrected, supplied or had, such board may authorize and require such defects or omissions of proceedings to be corrected, supplied or had. It may refer any or all such certificates, statements, papers, records and proceedings to the prosecuting attorney, whose duty it shall be to examine the same and without delay report in writing his opinion to the board. It shall direct that such of the several amounts of money proposed to be raised for township, school, highway, drain and all other purposes as shall be authorized by law, be spread upon the assessment roll of the proper townships, wards and cities. Such action and direction shall be entered in full upon the records of the proceedings of the board, and shall be deemed final as to the levy and assessment of all such taxes, except when there is a change made in the equalization of any county by the board of state tax commissioners upon appeal in the manner provided by law. § 4031.

For similar provision, see § 4493, C. L. of 1915.

MANDATORY: The corresponding provisions of the tax law of 1869, requiring the board to ascertain and determine the county tax and then to apportion the same and the state tax among the townships, etc., were held to be mandatory.—Boyce v. Sebring, 66 / 213. Mandamus lies to compel the board to direct the levy of such taxes as are shown by legal township statements.—Robbins v. Barron, 33 / 126. The board must determine whether or not the taxes on the roll appear to be authorized by law and, if they are so authorized, they should be assessed and collected; if not, the improper items should be rejected.—Zink v. Supervisors, 68 / 283.

APPORTIONMENT: The apportionment consists in ascertaining by a mathematical computation what part of the state and of the county tax each township shall raise. The law lays down the ratio and says that the apportionment shall be in proportion as the total equalized valuation of the taxable property in the county is to the equalized valuation of the taxable property in the township, so is the whole amount to be raised to the amount to be raised in each township.—Boyce v. Sebring, 66 / 215. To authorize the supervisor to assess or impose state and county taxes their amount for the township must have been apportioned by the board of supervisors and certified to him by their clerk.—Clark v. Axford, 5 / 188. It seems that the board cannot delegate the authority to make the apportionment to their clerk.—Scofield v. Lansing, 17 / 437. The apportionment may be made by certain percentage on

the assessed valuation.—Hubbard v. Winsor, 15 / 146. Where competent evidence does not show the apportionment, there is no basis for an estimate as to whether a tax is or is not excessive.—Yelverton v. Steele, 36 / 62. Apportionment may be enforced by mandamus.—Aud. Gen. v. Supervisors, 24 / 237; Att'y Gen. v. Supervisors, 30 / 388. This section contemplates a computation of personal assessments in October, and that the apportionment shall be made on the basis of the aggregate real and personal assessment as determined by the board. This determination was made in October, but the board, in making up its figures, used the assessments of personal property as they appeared on the original rolls, which was a mistake in the performance of a ministerial duty.—Aud. Gen. v. Griffin, 140 / 430. The board is not bound by the figures of the state tax commission in making its equalization.—Id.

COUNTY TAX: The authority to tax is fixed by the statute and must be strictly pursued.—Case v. Dean, 16 / 32. Any material excess renders the tax void and if lands are sold for such tax, the deed will be void.—Id.; Hall v. Kellogg, 16 / 135; Edwards v. Taliafero, 34 / 13; Att'y Gen. v. Bay Supervisors, 34 / 46; Wattles v. Lapeer, 40 / 624; Connors v. Detroit, 41 / 128; Silsbee v. Stockle, 44 / 561; Hammontree v. Lott, 40 / 190; Burroughs v. Goff, 64 / 468-9; Boyce v. Sebring, 66 / 219. The allowance of illegal demands by the board of supervisors will not invalidate a tax, unless the amount raised to pay them is incorporated with it.—Wright v. Dunham, 13 / 414. When the county tax will not be defeated.—Silsbee v. Stockle, 44 / 561. Where the board, instead of fixing a specific sum to be raised as a county tax, directed a percentage on the assessed value, it was held legal. The designation of a percentage on a definite sum is just as certain, as if it were calculated and stated in figures, and leaves nothing to be done to make it known, except a simple calculation.—Hubbard v. Winsor, 15 / 153.

TOWNSHIP TAX: The board of supervisors does not originate township or school taxes, but they take the certificate of the township clerk of the several amounts which the proper authorities have voted for those purposes and direct the amount specified, if they appear to be authorized by law, to be spread upon the tax roll of the townships. The board has no discretion in the premises, and the action of the supervisors is not required to give the local officers power in the premises, but rather to insure the duty being surely and regularly performed.—Robbins v. Barron, 33 / 126. Hence the supervisor may levy township, school and highway taxes without order of the supervisors, if legally authorized by the proper authority.—Id.; Upton v. Kennedy, 36 / 220; Hunt v. Chapin, 42 / 24; Boyce v. Sebring, 66 / 218; Aud. Gen. v. McArthur, 87 / 462-3. And the board cannot certify the taxes to be raised in any township without the certificate of the township clerk.—Aud. Gen. v. McArthur, 87 / 462. Drain taxes appear to stand upon a different footing from other taxes, and cannot be spread by the supervisors without the direction of the board.—Post v. Harris, 95 / 324. A township tax not authorized by the electors or the township board is void.—Lacey v. Davis, 4 / 157. Where the township records fail to show that any sum was voted by the electors or town board, the levy of a tax therefor is illegal, no presumption arising that such vote was had or taken.—Williams v. Mears, 61 / 86. Authority to levy must appear of record.—Id. 89; Mich. Land, etc. Co. v. L'Anse, 63 / 702; Burroughs v. Goff, 64 / 464; Boyce v. Sebring, 66 / 210. Every essential proceeding in the levy of taxes must appear of record.—Aud. Gen. v. McArthur, 87 / 462. When a township tax exceeding the amount voted by the township board may be sustained.—Silsbee v. Stockle, 44 / 561.

REVIEW: When any certificate, paper, or record submitted to it is not properly certified, the board of supervisors may authorize and require such defect or omission to be corrected.—Aud. Gen. v. Ayer, 122 / 136. When board of supervisors cannot review proceedings of drain commissioner in establishing a drain, and refuse to order the spreading of the assessments for the drain.—Horn v. Board of Sup'rs, 135 / 553.

DEFECTIVE PROCEEDINGS: Where proceedings of drain commissioner are defective in matters that do not occur until more than ten days after his final determination, the board of supervisors may refuse to spread the tax.—Kenyon v. Supervisors of Ionia Co., 138 / 544. See also Joliet Bridge & Iron Co. v. Freeman, 149 / 275.

1077. Costs on Appeal.—If upon such appeal to the board of state tax commissioners it is determined by said board that the appeal is groundless and not well founded, then the costs made and incurred by the county in defending the same and in the proceedings thereof, shall be paid by the township whose supervisor made such appeal. If the allegations set forth by the said supervisor making such appeal are determined to be well founded, then the said county shall pay the costs of the said township by it expended in making and prosecuting said appeal, but in no case shall more than seventy-five dollars costs be taxed by either side. The costs shall be taxed by affidavit before the county clerk in accordance with the rules of practice now governing circuit courts as to taxation of costs. Copies of the said bill of costs shall be served upon the county treasurer by the township and upon the supervisor of the township by the county. If costs be taxed in favor of the county and against the township, the county treasurer is hereby authorized to take the amount of said costs out of any funds due or that may become due said township, and transfer the same to the general fund of said county. If costs shall be taxed in favor of the township, the said county treasurer shall immediately pay over to the treasurer of said township, from the general fund of said county, the amount of said taxed costs, and the township treasurer

shall deposit the same to the credit of the contingent fund of said township. § 4032.

1078. Supervisor to Take Official Notice of Records, Etc.—The clerk of the board of supervisors shall, immediately after the said apportionment, make out two certificates showing the amounts apportioned to each township for State, county and the various township purposes, each tax being kept distinct, one of which he shall deliver to the county treasurer, and the other to the supervisor of the proper township: Provided, That if said clerk fail to make such certificate, the supervisor shall take official notice of all certificates, statements, papers and records in the office of the township and county clerk relating to the levy of taxes in his township, and of the action of the board of supervisors thereon. § 4033.

For similar provision see § 4494, C. L. of 1915.
COUNTY CLERK'S CERTIFICATE: The certificate of the county clerk is authority for the supervisor to assess the state and county taxes.—Clark v. Axford, 5 / 18. See Boyce v. Sebring, 66 / 222.

1079. Manner of Spreading Taxes on Roll.—The supervisor of each township or ward, and the assessing officer of each city or village, as provided by law, shall proceed to assess the taxes apportioned to his township, or assessment district, according and in proportion to the valuations entered by the board of review in the assessment roll of the township, ward, village or city, of the year: Provided, That if the board of review make no such entry, then on the valuation therein as entered by the supervisor or assessor. For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than one per cent; said excess shall belong to the contingent fund of the township; such taxes shall be entered in separate columns, as follows: All school taxes and the one mill tax in one column, highway taxes in another, township taxes in another, county taxes in another, and the State taxes in another column; and, if other taxes are at any time required to be raised, they shall be placed in separate columns. The total of all the taxes assessed against any one valuation or parcel of property shall be added and carried out in the last column upon the right-hand side of such roll. § 4034.

For similar provision see § 4495, C. L. of 1915.
ASSESSING TAXES: The supervisor cannot levy taxes at his discretion.—Lacey v. Davis, 4 / 157; Case v. Dean, 16 / 32. He can impose only such taxes as have been previously required by some other competent authority.—Clark v. Axford, 5 / 187. Only such as are properly certified to him for that purpose and such as the law makes it his own immediate duty to assess without such certificate.—Case v. Dean, 16 / 32; Sage v. Aud. Gen., 72 / 638. See Iron and Lumber Co. v. Crystal Falls Twp., 60 / 510. To give the supervisor jurisdiction, he must receive the equalized assessment roll duly certified; the state and county taxes must be apportioned and certified to him by the clerk of the board of supervisors; the township taxes must be certified by the township clerk; the school district taxes by the district board, and the highway taxes by the overseers of highways for the respective road districts.—Clark v. Axford, 5 / 188. And under the provisions of Secs. 36 and 37 of this act, there is no discretion left in the individual supervisor, but to assess the taxes as determined by the board.—U. School District v. Parris, 97 / 596-7. As to overseers' lists of unpaid highway assessments, see Hamilton, etc. Co. v. L'Anse Twp., 107 / 419.

School taxes on tax rolls.—Port Huron Bd. of Education v. Treasurer, 57 / 46. The taxes are assessed upon the valuations in the roll as they were before equalization.—Tweed v. Metcalf, 4 / 589. The failure of a supervisor to extend the taxes levied in his township upon the corrected assessment roll received from the board of supervisors after equalization is fatal to the validity of such taxes and of tax deeds issued on sales for the non-payment thereof.—Seymour v. Peters, 67 / 415; Fowler v. Campbell, 100 / 398. And when the supervisors apportion an increase in the valuation of the lands on the assessment roll, it will avoid the tax if the supervisor distributes the increase upon the real estate only and not on the personalty also.—Sinclair v. Learned, 51 / 335. As to whether a supervisor may refuse to levy a tax which he knows to be illegal, even though certified to, see Wall v. Trumbull, 16 / 240; Smith v. Crittenden, 16 / 152; People v. Blackman Twp., 14 / 336. But mandamus, being a discretionary writ, was denied, to compel a supervisor to spread a portion of the county tax purporting to have been voted to purchase a poor farm, but really intended to aid in securing a location for a tannery.—Cheboygan Supervisors v. Supervisor, 94 / 386. When a dollar-

mark is not necessary.—Bird v. Perkins, 33 / 28. The time has gone by, if it ever was, when the proceedings of taxing officers are to be criticised with microscopic nicety and the exact time and method of every step examined to detect a departure from the law, however insignificant or unintentional. The policy of the law is that parties shall pay legal taxes even though there may be some irregularity in demanding them and that they shall complain to the courts of those errors only which may injure them.—Stockle v. Silsbee, 41 / 615, 618.

SEPARATE COLUMNS: This provision is mandatory. It was intended for the benefit of the taxpayer, to enable him to distinguish the different species of taxes he should be called upon to pay and their respective amounts.—Case v. Dean, 16 / 31; Tillotson v. Webber, 96 / 155. And a tax is invalid if it appears only upon a roll to which it does not belong and is omitted from a roll to which the law expressly assigns it.—Folkerts v. Power, 42 / 283. But a bounty tax required to be levied with the township taxes was held valid though placed in a column by itself headed "township taxes."—Wall v. Trumbull, 16 / 240. A township tax levy for highway purposes is properly included with the regular highway tax, and need not be placed in the column for township taxes.—Silsbee v. Stockle, 44 / 561; Tillotson v. Webber, 96 / 155. Each tax stands on its own basis. Legal taxes are not invalidated by illegal ones in the same roll, if distinguishable and separable therefrom.—Clark v. Axford, 5 / 191; Conway v. Waverly Twp. Bd., 15 / 257; Pillsbury v. Aud. Gen., 26 / 245.

SUPERVISOR'S LIABILITY: The supervisor is not liable in trespess on account of any errors or defects in the description of real estate in the assessment roll as certified to him nor for levying illegal sums properly certified to him; but if the entire roll be void the supervisor may become liable for attaching his warrant and commanding the levy of the tax.—Clark v. Axford, 5 / 190. See Atwell v. Zeluff, 26 / 118. He acts only ministerially in levying the taxes properly certified to him, and is not liable where the precept or order comes from the proper source and is within the apparent authority of the body or officer making it. Even if he has knowledge, outside of the certificate, of facts constituting an illegality alleged, the rule is the same.—Wall v. Trumbull, 16 / 233-4. See Bird v. Perkins, 33 / 28; Matthews v. Densmore, 43 / 463, and cases cited.

EXCESSIVE LEVY: Renders tax void.—Lacey v. Davis, 4 / 140; Case v. Dean, 16 / 32; Hall v. Kellogg, 16 / 135; Edwards v. Taliafero, 34 / 13; Att'y Gen. v. Bay Supervisors, 34 / 46; Wattles v. Lapeer, 40 / 624; Connors v. Detroit, 41 / 128; Railroad Co. v. Aud. Gen., 41 / 635; Silsbee v. Stockle, 44 / 561; Hammontree v. Lott, 40 / 190; Burroughs v. Goff, 64 / 468-9; Boyce v. Sebring, 66 / 219; Seymour v. Peters, 67 / 415; Rogers v. White, 68 / 10; Sage v. Aud. Gen., 72 / 638; Gamble v. Aud. Gen., 78 / 302. And collection fees added by the supervisor vitiated a sale for taxes.—Buel v. Irwin, 24 / 145. The collection of a tax levy can be restrained so far as it is excessive.—Moss v. Cummings, 44 / 361; Merrill v. Humphrey, 24 / 170. But one who seeks to vacate a tax sale because the tax was excessive must first pay or offier to pay what is equitable.—Sinclair v. Learned, 51 / 347.

BOARD OF REVIEW: The term board of review in this section applies to the local board, or to the state board, as circumstances require.—State Tax Comrs. v. Quinn, 125 / 128, 131.

CITED: Corresponding section of law of 1889, cited in Jenney v. Twp. of Mussey, 121 / 232. See also Aud. Gen. v. Menominee Suprs., 89 / 555; West Michigan Lumber Co. v. Dean, 73 / 462; Fells v. Barbour, 58 / 52; Rothchild v. Begole, 105 / 391.

1080. Taxes and Charges a Lien After Dec. 1.—The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade. § 4035.

For similar provision, see § 4496, C. L. of 1915.

DEBT DUE: When the law prescribes who shall be liable for the payment of taxes, and whose property may be levied upon therefor, it at the same time by implication forbids the officer to seize upon the property of others, or by act or omission to make the tax a charge upon such property.—Raynsford v. Phelps, 43 / 345-6. The taxes are a debt which it is the duty of the person assessed to pay.—W. Mich. Lumb. Co. v. Dean, 73 / 462; Muskegon v. S. K. Martin Lumb. Co., 86 / 629. The liability of the party assessed to pay the tax becomes fixed when the tax is extended upon the original assessment roll.—W. Mich. Lumb. Co. v. Dean, 73 / 462.

LIEN: Lands in this State have always been subject to a lien for the taxes levied thereon. The only object in fixing a day when the tax becomes a lien was to settle the question, as between successive owners of the land, which of them ought to pay the tax.—Harrington v. Hilliard, 27 / 278. Suits to recover taxes.—St. Joseph City v. Vail, 137 / 276.

1081.—Supervisor to Give Statement of Taxes to Town Clerk.—Before the supervisor shall deliver such roll to the township treasurer, he shall carefully foot the several columns of valuation and taxes, and make a detailed statement thereof, which he shall give the clerk of his township,

and said clerk shall immediately charge the amount of taxes to the township treasurer. § 4036.

For similar provision, see § 4497, C. L. of 1915.

1082. Supervisor to Prepare Copy of Tax Roll and Annex Warrant.—The supervisor shall thereupon prepare a copy of the said assessment roll, with the taxes assessed as hereinbefore provided, and annex thereto a warrant signed by him, commanding the township treasurer to collect the several sums mentioned in the last column of such roll and to retain in his hand the amount receivable by law into the township treasury for the purpose therein specified, and to pay over to the county treasurer the amounts which shall have been collected for State and county purposes up to and including the tenth day of January next following, within three days thereafter, and the remainder of the amounts therein specified for said purposes, and account in full for all moneys received on or before the first day of March next following; and the said warrant shall authorize and command the treasurer, in case any person named in the assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person. The supervisor may make a new roll and warrant in case of the loss of the one originally given to the township treasurer; the copy of the roll, with the warrant annexed, shall be known as "the tax roll." § 4037.

TAX ROLL: The copy of the roll with the warrant annexed is designated as the "tax roll."—West Mich. Lbr. Co. v. Dean, 73 / 462. Not infrequently called the "collection roll."—Fells v. Barbour, 58 / 52. Where a warrant was attached to the original roll instead of a copy it was held to confer upon the treasurer authority to seize property in satisfaction of a tax.—West Mich. Lbr. Co. v. Dean, 73 / 459; Aud. Gen. v. Hutchinson, 113 / 245. The entire theory of the tax system and all the regulations contemplate that the assessment roll and the tax roll shall be and continue substantially alike. No lawful change can be made in the collection roll by the supervisor after it has passed into the treasurer's hands for collection.—Ferton v. Feller, 33 / 199. Public policy will not permit any tampering with the roll after it has been completed and certified to, notwithstanding the intention be good and the taxpayer not injured.—Weston v. Moore, 84 / 343, citing Clark v. Axford, 5 / 182; Ferton v. Feller, 33 / 199. The supervisor cannot refuse to make out the tax roll and attach his warrant unless on account of some defect which renders the whole roll void.—Clark v. Axford, 5 / 182.

WARRANT: The warrant is in the nature of an execution for the collection of the tax.—McCallum v. Bethany, 42 / 457. It need not run in the name of the people.—Tweed v. Metcalf, 4 / 588; Wisner v. Davenport, 5 / 501. It is not fatally defective if addressed to the treasurer of the township of ——, if signed by the supervisor of the proper township and attached to its tax roll.—Nat'l Bank v. St. Joseph, 46 / 528; Aud. Gen. v. Stiles, 83 / 460. But a warrant without date or signature is insufficient.—Westbrook v. Miller, 64 / 129. Delay in annexing the warrant will not necessarily invalidate the roll.—Hubbard v. Winsor, 15 / 146. The warrant is evidence of the amount and purposes of the several taxes in the roll.—Case v. Dean, 16 / 35; Palmer v. Napoleon Twp., 16 / 179. When the warrant is attached to the roll, the latter becomes a part of the warrant.—Tweed v. Metcalf, 4 / 599. The warrant is the treasurer's authority for collecting the tax.—Id. It is sufficient to enable him to make his collection, if property of the person assessed is within his jurisdiction.—Port Huron Twp. v. Potts, 78 / 436. It authorizes him to seize the goods and chattels of such person and sell the same for the tax.—West Mich. Lumb. Co. v. Dean, 73 / 462. The supervisor cannot refuse to attach his warrant on account of errors or defects in description. He cannot notice or except individual cases—his warrant is required to be general and he must attach it in such form.—Clark v. Axford, 5 / 191-2. The collector's authority does not proceed from the roll, but from the warrant, and that will protect him in seizing and selling the property, if fair on its face.—Curtiss v. Witt, 110 / 131, citing Tweed v. Metcalf, 4 / 579; Byles v. Genung, 52 / 504; Wood v. Thomas, 38 / 686; Moss v. Cummins, 44 / 359; Reid v. Perkins, 33 / 28.

1083. To Notify Treasurer of Amount of State and County Taxes.—The supervisor of each township, on or before the fifth day of November in each year, shall notify the township treasurer of the amount of the State and county taxes as apportioned to his township. § 4038. [See Form No. 67.]

1084. Treasurer's Bond to be Approved by Supervisor.—The township treasurer, on or before the twenty-eighth day of November, shall give to the county treasurer a bond running to the county in double

the amount of State and county taxes, with sufficient sureties to be approved by the supervisor of the township and the county treasurer, conditioned that he will pay over to the county treasurer as required by law all State and county taxes which he shall collect during his term of office, and duly and faithfully perform all the other duties of his office; but, when said bond is furnished by a surety company authorized to transact business under the laws of this State, it shall be sufficient that said bond be equal to the amount of State and county taxes, plus ten per cent thereof. § 4038.

1085. Receipt for Treasurer's Bond to be Delivered to Supervisor.—The county treasurer shall file and safely keep such bond in his office, and shall give to the township treasurer a receipt stating that he has received the bond required, which receipt the township treasurer shall deliver to the supervisor on or before the first day of December. § 4038.

1086. Supervisor to Deliver Tax Roll to Treasurer.—The supervisor, after the delivery of such receipt and on or before the first day of December, shall deliver to the township treasurer the tax roll of his township. § 4038.

1087. When Supervisor to Deliver Roll to Sheriff for Collection.—In case the township treasurer shall neglect or refuse to file his bond with the county treasurer, in the manner and within the time prescribed by law, and the township board shall fail to appoint a treasurer who shall give such bond, and deliver a receipt for the same to the supervisor by the tenth day of December, the supervisor shall deliver the tax roll with the necessary warrant directed to the sheriff of the county, who shall, before he receives said tax roll, execute and deliver like bonds required of the township treasurer, and make like collections and returns, and shall be entitled to the same compensation on all taxes collected by him by virtue of such warrant as is allowed to the township treasurer, and for the purpose of collecting the same, shall be vested with all the powers conferred upon the township treasurer, and suit may be brought on such sheriff's bond under the same circumstances as on those of a township treasurer. § 4047.

The collection of taxes by the sheriff being a duty foreign to his position invests him with a new office not within the contemplation of sureties of his official bond as sheriff.—White v. East Saginaw, 43 M. 567.

1088. Reasons for Which a Tax Shall be Held Illegal.—In any suit or proceedings to enforce or set aside any tax, such tax shall be held illegal only for one of the following reasons:

First, That no law authorizes such tax;

Second, That the person or persons appointed to decide whether a tax shall be raised, under a given law, have acted without jurisdiction, or have not imposed the tax in question;

Third, That the person or property assessed was exempt from the taxation in question or was not legally assessed;

Fourth, That the tax has been paid;

Fifth, That the supervisor or board of review in assessing a person or property for taxation, or in the apportionment of the tax to the person or property in question, acted fraudulently.

If any such illegality, omission or fraud affects the amount of one tax

only, the tax shall be sustained so far as the same is legal and just. § 4074.

Where a supervisor fraudulently changed and reduced the valuation of certain lands on his assessment roll after the roll had been reviewed and completed, the entire tax roll was void.—Auditor Gen. v. Hughitt, 132 / 312. The provision that, if any fraud affects the amount of one tax only, the tax shall be sustained so far as the same is legal and just, does not apply to the fraudulent reduction of an assessment, since such reduction affects every taxpayer.—Id.

1089. Assessment Not Affected by Organization of New County or Division of Township.—In case of the organization of a new county after the time for making the assessment roll and prior to the return of the township treasurer, such new organization shall in no way affect the assessment, collection or return of taxes for that year on any lands attached to the new county. No division of a township, after the time for making the assessment roll, and prior to the return of the township treasurer, shall in any way affect the assessment, collection and return of such taxes; but such taxes shall be assessed, collected and returns made as though there had been no such division. If lands are detached from any county after the taxes thereon are returned to the auditor general, and any such taxes are afterwards rejected or set aside, the county from which they are detached shall receive credit, and the county to which they are attached shall be charged, as may be proper under the provisions of this act. § 4104.

1090. Compensation of Supervisor.—The supervisor, for taking the assessment and for all services, shall be entitled to three dollars per day and at the same rate for parts of days. See Sec. 282 of this Guide.

1091. Supervisor Shall Collect from Treasurer Taxes Unaccounted For.—If at any time it shall be discovered that the treasurer of any township has received the tax assessed upon property which has been returned delinquent, the supervisor shall have power, and he is hereby required, to collect the same, in the name of his township, from such treasurer or his sureties, together with interest and charges. § 4111.

1092. Injunction Not to Issue.—No injunction shall issue to stay proceedings for the assessment or collection of taxes under this act. § 4113.

The provisions in the tax laws prohibiting the issuance of injunctions to restrain the assessment or collection of taxes are not unconstitutional, as those acts provide a remedy by suit to recover taxes paid under protest.—Lake Superior Ship Canal Railway and Iron Co. v. Aud. General, 79 / 351.

1093. Penalty for Assessing Property at More or Less Than Cash Value.—If any supervisor or other assessing officer of any township or city shall wilfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor, and on conviction therof he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, at the discretion of the court. § 4115.

1094. Officer Swearing Falsely Guilty of Perjury.—Any person who, under any of the proceedings required or permitted by this act (the General Tax Law, § § 3995-4156, C. L. of 1915), shall wilfully swear falsely, shall be guilty of perjury and subject to its penalties. § 4117.

1095. Liability and Penalty for Official Neglect.—Any officer who shall wilfully neglect, or refuse, to perform any of the duties imposed upon him by the General Tax Law, shall, when no other provision is made herein,

be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding three hundred dollars, in the discretion of the court, and shall be liable to any person injured thereby to the full extent of the injury sustained. § 4118.

The last clause of this section places a personal liability upon the assessor in the event of any wilful neglect or refusal to perform his duties, whenever such neglect or refusal shall occasion loss or injury to any person.

1096. State Tax Homestead Lands to be Omitted from Roll.—All taxes charged against lands in the office of the auditor general at the time they are deeded to the State as state tax homestead lands, shall be canceled, but no part of such taxes due to the township or county shall be charged to the State, but the State, county and township respectively shall bear the share of loss on such taxes that properly belongs to each, and the auditor general shall make a list of all such lands in each county on or before the first day of March in each year and transmit such list to the county treasurer and the county treasurer shall serve, or cause to be served, upon the supervisor of the township in which such lands are located, a copy of the list of lands in such township as furnished to said treasurer by the auditor general. Said supervisor shall produce said list to the board of review while in session for the purpose of reviewing the assessment roll. The supervisor shall omit and cancel from his assessment roll all said lands so deeded to the State, as shown by said list, and it shall also be the duty of the board of review, when in session, to compare the assessment roll of the township with the list so furnished by the county treasurer, as aforesaid, and correct all mistakes, and said lands so deeded as aforesaid shall not be liable to any assessment for any purpose until the same are again sold and deeded by the State. § 4129.

Drain tax and special assessments cannot be laid on tax homestead lands, until after deed issues.—Opinion Attorney General, 1900, p. 161.

1097. Assessment of Forestry Reserve Lands Only for Schools and Roads.—All forestry reserve lands set aside under or pursuant to the provisions of this act shall be exempt from taxation, except as herein otherwise provided. Said lands shall be assessed in the same manner as are the similar lands of individuals situated within the townships in which the same are situated. Within ten days after the final meeting of the board of review of each township, the supervisor of such township shall file in the office of the commissioner of the state land office, at Lansing, a certified copy of the assessment roll of his township, with the several assessments completed thereon and reviewed, said roll to specify which of the lands appearing thereon are forestry reserve lands and the valuation placed upon each description, and also the lands owned by private individuals, and the valuation of such lands; the several matters appearing in said assessment roll to be verified by the supervisor on oath. No assessment of forestry reserve lands shall be valid, nor shall any tax be spread thereon, until such assessment is approved by the commissioner of the state land office, such approval to be attached to and become a part of the original assessment roll of the township. No tax shall be levied upon such lands except for the maintenance of schools and roads, and no tax shall be imposed upon any of the forestry reserve lands for the support of any school or the building of any schoolhouse or the building or

maintenance of any road which is not at present in existence, unless the same shall have been first approved in writing by the forestry commission. All taxes lawfully levied upon said lands in accordance with the provisions of this section shall, in each year, be paid by the state treasurer to the township treasurer of the township in which the same are situate, by a warrant in favor of the said township, said warrant to be issued upon the filing with the auditor general by the said forestry commission of a certificate that such taxes have been levied in accordance with the provisions of this act. No fee shall be allowed to the township treasurer or other official for the collection of such tax or taxes. § 749.

1098. Exemption of Private Forest Reserves from Taxation.—It shall be the duty of the supervisor or assessor to personally examine the various private reservations when the real estate is assessed for taxation, and to note upon his return the condition of the trees, and that same are properly planted and continuously cared for in order that the intent of this act may be complied with. If the said private reservation is properly planted and continuously cared for, such part of its value as is over and above one dollar per acre shall be exempt from all taxation. When any owner of a forest reservation provided for in this act shall desire to cut and harvest trees in said reservation, he shall notify the tax assessor of his district of his said intention, whereupon the said assessor shall, before the cutting thereof, estimate the cash value of the timber on the stump so to be cut and harvested, and shall issue a license to cut and remove said timber, which license shall be in effect upon payment to the collector of taxes of the district of a fee of five per cent of such appraised valuation. The assessor shall notify the clerk and the tax collector of his district of the issuance of such license. If any such timber is cut or removed without payment of such license fee, it shall be the duty of the tax collector to levy upon such timber for collection of such license fee in the manner provided by law for collection of personal taxes. § 764.

1099. When Supervisor Shall Appear Before State Tax Commissioners with Roll.—After the various assessment rolls required to be made under this act or under the provisions of any municipal charter shall have been passed upon by the several boards of review, and prior to the making and delivery of the tax rolls to the proper officer for collection of taxes, the said several assessment rolls shall be subject to inspection by said board of state tax commissioners or by any member or duly authorized representative thereof, and, in case it shall appear to said board, after such investigation, or be made to appear to said board by written complaint of any taxpayer, that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said board may issue an order directing the assessor whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered at a time and place to be stated in said order, said time to be not less than seven days from the date of the issuance of said order, and the place to be at the office of the board of supervisors at the county seat or at such other place in said county in which said roll was made as said board shall deem most convenient for the hearing herein provided. A copy of said order shall be published in at least one newspaper published in said county, if there be

any, at least five days before the time at which said assessor is required to appear; and where practicable personal notice by mail shall be given prior to said hearing to all persons whose assessments are to be considered. A copy of said order shall also be served upon the supervisors or assessing officer in whose possession said roll shall be at least three days before he is required to appear with said roll. The said board, or any member thereof, shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by review of said assessments thus provided for may appear and be heard at said hearing. In case said board, or member thereof, who shall act in said review, shall determine that the assessments so reviewed are not assessed according to law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board, or member thereof acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter, in the proper column, the true cash value of the same. Said board shall also spread upon said roll a certificate, signed by each member officiating at the review proceedings, showing the day and date on which said assessment roll was reviewed. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him while in attendance at the meeting of the board of supervisors, to be presented to and paid by the proper officer of the municipality of which he is the assessing officer in the manner as his other compensation is paid. The action of said board or member done as provided in this act shall be final. When any property has been reviewed, assessed and valued by said board as herein authorized, such property shall not be assessed or valued at a lower figure within a period of three years, where the property remains substantially the same, without the written consent of said board. § 4151.

1100. Powers of State Tax Commissioners Under Tax Law.—If it shall be made to appear to said board at any time that any property liable to taxation has not been assessed for any previous year as herein provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made, and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and the several years that the same has been liable for and escaped taxation, and said board of supervisors shall ascertain the rate of taxation, for said several years, and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes. But this provision shall not be deemed to relate back prior to the going into effect of this section; and in case of change in ownership

of the property omitted, said taxes shall not be spread against said property prior to the last change of ownership. § 4153.

1101. Tonnage and Mortgage Taxes.—For an act providing for a tonnage tax on steam vessels, see Act 70 of 1911, being § § 4248-50, C. L. of 1915, also Sec. 1428 of this Guide. For an act providing for the assessment and collection of a specific tax upon the class of credits founded upon and evidenced by mortgages and liens upon real property, see Act 91 of 1911, being § § 4268-77, C. L. of 1915.

1102. Blank Statements, by Whom Furnished.—It is the duty of the auditor general to provide and furnish in due season to the several county clerks and treasurers, at the expense of the State, all forms, blanks and record books made necessary by the General Tax Law, and it is the duty of said officers to use such blanks and no others. § 4121.

CHAPTER III.

DUTIES OF SUPERVISOR RELATING TO HIGHWAY TAXES.

1103. Supervisor to Levy Taxes for Highways.—A certified copy of the record of the proceedings of the township meeting or township board, fixing and determining the amount of highway improvement and road repair taxes, shall be transmitted by the township clerk to the supervisor of his township on or before the first day of October in each year, and such taxes shall be levied and collected in the same manner as moneys for general township purposes are levied and collected. The taxes so levied shall be carried out in two separate columns in the tax roll, one as the road repair tax and the other as the highway improvement tax, and the township treasurer shall keep separate accounts of the same. § 4323.

See also Sections 1073 to 1083, inclusive, of this Guide.

1104. Levy of Damages for Laying Out Highway.—Damages awarded in consequence of laying out or altering any highway shall be paid or tendered to the person or persons entitled thereto. * * * The amount of any such damages shall be assessed, levied and collected upon the taxable property of the township chargeable therewith, in the same manner as other taxes are levied and collected. § 4311.

1105. Supervisor to Levy Expenditures for Cutting Noxious Weeds.—The supervisor of the township shall add to all such expenditures for the cutting of noxious weeds as have been audited and allowed by the township board, ten per cent of the amount of such expenditures and shall cause all such expenditures, together with the additional ten per cent, to be severally levied on the lands on which such expenditures were made, and the same shall become a lien upon said land and shall be collected in the same manner as other township taxes are collected; the same when collected shall be paid into the general township fund to reimburse the outlay therefrom aforesaid. § 4607.

1106. To Assess Certain Expenses of the Commissioner of Highways.—The proper expenses incurred by the commissioner of highways for the security of persons and property on the highways, shall be reported to the supervisor on or before the first day of October and assessed by him. See Secs. 1535 to 1540 of this Guide.

1107. Supervisor to Levy County Road Tax.—After the board of supervisors shall have decided upon the amount of county road tax to be raised, the said board shall thereupon apportion such tax between the several townships and cities of said county according to their equalized valuation. The supervisors or other assessing officers in such townships and cities shall levy and apportion the taxes so apportioned as provided in this section, to their respective townships and cities respectively, upon which the county taxes are assessed. The taxes so assessed shall be collected and paid to the county treasurer, the same as other county taxes. All the provisions of law relating to the assessment, levy, collection and return of county taxes and the sale of property delinquent therefor, shall apply to taxes to be raised pursuant to this act. § 4366.

CHAPTER IV.

DUTIES OF SUPERVISOR IN TOWNSHIPS WHICH HAVE RETURNED TO THE FORMER SYSTEM OF STATUTE LABOR.*

1108. Supervisor to Make Highway Labor Assessment Lists.—The supervisor shall, within two days after the completion of the assessment roll by the board of review in each year, make the assessment lists for highway labor, for the several road districts in his township as provided in the two following sections. If deemed necessary he may make duplicate copies of said lists and file one copy of each with the township clerk. § 4618.

1109. What Assessment Lists to Contain.—The supervisor shall make out from such assessment roll a separate list for each road district, showing the name of each person assessed therein on account of personal property, and the amount so assessed against each such person, and a description of each lot or parcel of land within each district, with the valuation thereof, and the name of the person against whom the same is assessed, if the same be known, inserting in a separate part of such list descriptions of lands owned by non-residents of the township, with the value of each lot or parcel set down opposite each such description, as the same shall appear on the assessment roll, and if any lot or tract be not separately described in such roll, the value thereof shall be computed in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part. § 4619.

1110. Supervisor to Carry Out Number of Days Assessed.—The highway labor to be assessed in any road district shall be apportioned by the commissioner, and assessed upon the estate, real and personal, of every inhabitant thereof, and upon each tract or parcel of land therein of which the owners are non-residents, as the same may appear by the assessment roll. The supervisor shall carry out opposite each description of property on the list made by him, pursuant to the last preceding section, the number of days which such property shall be assessed for highway tax, but where there are different descriptions of property

*Chapter XXV, permitting the return to the former system of statute labor, was added to the General Highway Law (Act 283 of 1909) by Act 266 of 1913. Section 54 provides that this act (i. e., Chapter XXV) shall not become operative in any township until the same is approved by a majority of the qualified voters thereof in the manner provided. The manner of the adoption by referendum of the provisions of Chapter XXV is prescribed in Sections 54-58, being § § 4665-69, C. L. of 1915. See Sections 1810 to 1868 of this Guide.

following each other and assessed to the same person, the number of days may be carried out in gross. § 4620.

1111. Supervisor to Deliver Lists to Commissioner.—When the supervisor shall complete the several road lists as provided in section seven, the same shall be forthwith delivered by him to the commissioner. § 4621. See Sec. 1108 of this Guide.

1112. Error in Lists Shall Not Invalidate Assessment.—No omission to enter or assess property for highway labor upon such lists, or other error or defect in such lists or in the warrants attached thereto, shall in any way affect or invalidate the assessment of property in the township assessment roll prepared by the supervisor. § 4621.

1113. Supervisor to Assess Arrearages of Labor.—The commissioner shall, between the first and fifteenth days of November in each year, call upon each overseer of his township for the purpose of procuring the returns mentioned in section 1854, and shall, on or before the twentieth day of November, deposit the returns mentioned in the sixth subdivision of said section with the supervisor of his township, whose duty it shall be to cause the amount of all arrearages of labor, estimating the same at one dollar fifty cents for each day to be levied on any lands, or other taxable property owned by persons in arrears, collected in the same manner that the contingent charges of the township are collected, and the same when collected shall be paid into the township treasury, and credited to the district in which the same accrued. § 4650.

CHAPTER V.

DUTIES OF SUPERVISOR RELATING TO DRAIN TAXES.

1114. Supervisor May Appear for Township on Review of Drain Assessment of Benefits.—On such reviews the supervisor or commissioner of highways of any township may appear on behalf of such township. At such review the county drain commissioner shall hear the proofs and allegations of all parties interested, and shall carefully reconsider and review the descriptions of land comprised within the special assessment district, the several descriptions assessed and his assessments of benefits, and define and equalize the same as may seem just and equitable. § 4902.

1115. Duty of Supervisor in Case Township Appeals.—Any township or townships assessed a per cent for benefits for the construction of any drain that may conceive itself or themselves aggrieved by the assessment made by the county drain commissioner, may, within ten days after the date of review provided in section one of this chapter, appeal therefrom as hereinafter provided. The supervisor of any township desiring to take such appeal shall make application to the probate court of the proper county for the appointment of a board of review. Only one application for a board of review shall be entertained by such probate court for any one drain. § 4907.

The "section one" referred to is § 4906, C. L. of 1915.

1116. Supervisor to Report Drain Assessment upon State Lands.—Any amount apportioned and assessed upon state lands shall be reported by the supervisor to the commissioner of the state land office within ten days after the delivery of his assessment roll to the township treasurer.

Said commissioner of the state land office shall enter on the books of his office, against each description of such state lands, the amount of drain taxes assessed thereon, and shall certify the same to the auditor general, who shall draw his warrant on the state treasurer therefor, to be paid out of any funds in his hands not otherwise appropriated. Such amount shall be forwarded by the commissioner of the state land office to the supervisor, on or before the fifteenth day of January next, and shall by him be applied in payment of such taxes. No patent shall issue for such lands until all such drain taxes are paid with interest at seven per cent. § 4912.

1117. Supervisor to Lay Statement of Drain Taxes Before Board.—The several supervisors shall lay such statements of drain taxes to be assessed before the board of supervisors at their next annual meeting, in the same manner, at the same time, and for like action as is now or as may hereafter be provided in the case of similar statements for township, city or other local taxes. § 4917.

1118. Supervisor to Spread Drain Taxes on Roll.—It shall be the duty of the supervisor to spread on his roll the total amount of all the drain taxes determined upon by the county drain commissioner to be assessed upon the township or city at large, by adding to the township or city tax for the year in which the same was assessed and extending said tax in the same column with the general township or city tax. He shall also spread upon said roll, separately, and immediately following the other descriptions, all tracts or parcels of land specified by the county drain commissioner to be assessed for benefits, and shall place opposite each description, in a column marked (giving the name) ———— "drain taxes," the amount of taxes apportioned thereon, as certified to him by the township or city clerk. But no drain taxes shall be so spread unless directed by the board of supervisors, as in case of other township or city taxes. § 4918.

1119. Supervisor to Furnish Treasurer Statement of Drain Taxes.—The supervisor shall, at the time of delivery of his assessment roll to the township treasurer, also furnish him with an itemized statement of the several amounts assessed upon the township at large for each particular drain, naming the drain. He shall also, at the same time, indorse upon every drain special assessment roll on file in the township clerk's office the amount of tax for benefits thereof spread by him on the tax roll of his township for that year, on each description. § 4919. [See Forms Nos. 68 and 69.]

A warrant for the collection of drain taxes is bad if the taxes are not so spread upon the assessment roll as to identify the drain for which each is levied, in order that each fund may be kept separate, and specific drain orders be paid from the proper fund.—Dunning v. Calkins, 51 / 557.

1120. Conditions Under Which Spreading of Drain Taxes May be Enjoined.—After any taxes have been assessed for the construction, location, or establishment of any drain, no injunction shall issue to restrain the spreading of the same upon the tax roll, nor to restrain the collection thereof, nor shall the same be in any manner stayed, unless the amount of such assessment shall first be paid into the township treasury to be applied upon such tax, in case the court in which the suit upon which such injunction is tried shall so order. § 4924.

CHAPTER VI.

DUTIES OF SUPERVISOR RELATING TO SCHOOL TAXES.

1121. Assessment of School Taxes.—It shall be the duty of the supervisor of the township to assess the taxes voted by every school district in his township, and also all other taxes provided for in this act, chargeable against such district or township, upon the taxable property of the district or township respectively, and to place the same on the township assessment roll in the column for school taxes, and the same shall be collected and returned by the township treasurer in the same manner and for the same compensation as township taxes. If any taxes provided for by law for school purposes shall fail to be assessed at the proper time, the same shall be assessed in the succeeding year. § 5699.

The provision that where school taxes are not assessed at the proper time they shall be assessed the succeeding year, applies to a case where the district board fails to certify a tax to the township clerk in time for certification to the supervisor for assessment, which statute is in the very line of an uniformity of taxation.—Wilcox v. Township of Eagle, 81 / 271.

The exemption of four surveyed townships in a school district from a general school tax levied upon the remaining territory is fatal to the validity of the tax levy, the law under which the district was organized requiring that all taxes should be spread upon all of the taxable property of the district.—Auditor General v. McArthur, 87 / 457.

1122. Assessment of One-Mill Tax.—The supervisor shall assess upon the taxable property of his township, one mill upon each dollar of the valuation thereof in each year, and report the aggregate valuation of each district to the township clerk. But before the supervisor shall assess said tax he shall examine the reports of the several school districts in his township for the preceding year, and, if said reports show, exclusive of funds raised for building purposes, a balance on hand in any district of a sum equal to or in excess of the amount paid for teachers' wages in said district during the preceding year, then said supervisor shall not assess the one-mill tax upon the property of such district for the ensuing year. § 5700.

1123. Assessment on Division of District, Etc.—The amount to be assessed upon the taxable property of any school district retaining the schoolhouse or other property, on the division of a district, as the same shall have been determined by the inspectors, shall be assessed by the supervisor in the same manner as if the same had been authorized by a vote of such district; and the money so assessed shall be placed to the credit of the taxable property taken from the former district, and shall be in reduction of any tax imposed in the new district on said taxable property for school district purposes. But, if the district retaining the schoolhouse shall vote to pay, and shall pay, before said taxes are assessed, any portion of said amount to the new district, said amount, as shall be certified by the moderator and director of the new district to the supervisor, shall be deducted from the amount to be assessed as provided in this section. When collected, such amount shall be paid over to the treasurer of the new district, to be applied to the use thereof, in the same manner, under the direction of its proper officers, as if such sum had been voted and raised by said district for building a schoolhouse or other district purposes. § 5701.

1124. Duties of Supervisor Relating to Taxes in Fractional Districts.—The full amount of all taxes to be levied upon the taxable property in a

fractional school district shall be certified by the district board to the township clerk of each township in which such district is in part situated, and by such township clerks to the supervisors of their respective townships, and it shall be the duty of each of said supervisors to certify to each other supervisor interested, the amount of taxable property in that part of the district lying in his township. But when there exists a manifest difference in the valuation of property assessed in fractional districts, composed of territory in adjoining townships or counties, such valuation shall be equalized for this specific purpose by the supervisors of the townships interested, at a joint meeting held for that purpose, on application of either of the supervisors of said townships. And such supervisors shall respectively ascertain the proportion of such taxes, including mill tax, to be placed on their respective assessment rolls, according to the amount of taxable property in each part of such district. And, if said supervisors cannot agree as to the proportion of such taxes to be placed on their respective assessment rolls, a supervisor from an adjoining township shall be called to meet with said supervisors in said fractional district and assist in equalizing said valuation. Said supervisor to be paid at the rate of three dollars per diem for the time necessarily employed in attendance at such meeting of the supervisors, and all necessary traveling expenses, by the townships in interest. § 5702. [See Form No. 70.]

1125. Statement of School and Library Tax to Township Treasurer.—The supervisor, on delivery of the warrant for the collection of taxes to the township treasurer, shall also deliver to said treasurer a written statement of the amount of school and library taxes, the amount raised for district purposes on the taxable property of each district in the township, the amount belonging to any new district on the division of the former district, and the names of all persons having judgments assessed under the provisions of this act (General School Law) upon the taxable property of any district, with the amount payable to such person on account thereof. § 5703. [See Form No. 71.]

1126. Statement of One-Mill Tax in Fractional District, Etc.—The supervisor of each township, on the delivery of the warrant for the collection of taxes to the township treasurer, shall also deliver to said treasurer a written statement, certified by him, of the amount of the one-mill tax levied upon any property lying within the bounds of a fractional school district, a part of which is situate within his township, and the returns of which are made to the clerk of some other township. [See Form No. 71.]. See Sec. 1414 of this Guide.

1127. Duties of Supervisor Relating to Assessing Judgment Against School Districts.—Whenever any final judgment shall be obtained against a school district, if the same shall not be removed to any other court, the treasurer of the district shall certify to the supervisor of the township and to the director of the district, the date and amount of such judgment, with the name of the person in whose favor the same was rendered, and if the judgment shall be removed to another court the treasurer shall certify the same as aforesaid, immediately after the final determination thereof against the district. § 12974.

If the district against whom any such judgment shall be rendered is situated in part in two or more townships, a certificate thereof shall be

delivered as aforesaid to the supervisor of each township in which such district is in part situated. § 12976.

The supervisor or supervisors receiving either of the certificates of a judgment as aforesaid shall proceed to assess the amount thereof, with interest from the date of the judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of the district, placing the same on the next township assessment roll in the column for school taxes; and the same proceedings shall be had, and the same shall be collected and returned in the same manner as other district taxes. § 12977.

1128. Liability for Neglect to Assess School Taxes.—Any township clerk who shall neglect or refuse to certify to the supervisor any school district taxes that have been reported to him as required by this act (General School Law), and any supervisor, wilfully neglecting to assess any such tax shall be liable to any district for any damage occasioned thereby, to be recovered by the treasurer in the name of the district, in an action of debt, or on the case. § 5758.

1129.—To Assess Taxes for Free School Text-books.—The district board of every school district in the State adopting free text-books under this act (147 of 1889), shall make and prepare annually an estimate of the amount of money necessary to be raised to comply with the conditions of this act, and shall add such amount to the annual estimates made for money to be raised for school purposes for the next ensuing year. Said sum shall be in addition to the amount now provided by law to be raised; which amount each township clerk shall certify to the supervisor of his township to be assessed upon the taxable property of the respective districts as provided by law for raising the regular annual estimates of the respective district boards for school purposes, and when collected shall be paid to the district treasurer in the same manner as all other money belonging to said district is paid. § 5784.

1130. To Assess Taxes for Rural High Schools.—The board of trustees have power to estimate and vote the amount of tax necessary to support the school at a meeting previous to October first in each year and report the same to the supervisor, which amount shall be spread upon the tax roll the same as other district taxes. § 5937.

1131. Taxes in Single Township School District of Upper Peninsula.—All taxes assessed within said township for school purposes shall be set forth in the assessment roll of said township, in a separate column, apart and distinct from all other township taxes. § 5901.

CHAPTER VII.

DUTIES OF SUPERVISOR RELATIVE TO MISCELLANEOUS TAXES.

1132. Repairs to Deficient Fence, When Supervisor to Assess Value of.—And in case of neglect or refusal by the owner or occupant of the land to pay the sum so due on or before the first day of the next succeeding October after demand thereof is made, the sum so due shall become a lien on the said land and the fence viewers shall report the same to the supervisor of the township, on or before the first day of November next thereafter, who shall cause the same to be spread upon the assessment

roll, in a separate column for that purpose, opposite the description of the land owned or occupied by the person or persons neglecting to pay the same. See Sec. 1787 of this Guide.

1133. **Taxes for Partition Fence.**—When the owner or occupant of land neglects or refuses for thirty days, after demand made, to pay for one-half of a partition fence, the value thereof having been ascertained by fence viewers, the same shall be assessed and collected, together with the costs of ascertaining the same. See Sec. 1894 of this Guide|

1134. **To Assess Taxes for Certain Survey.**—Whenever a majority of the resident owners of any section, or part or parts of any section of land in this State, after having given at least ten days' notice to all other persons, or their agents, owning land in the same section, or part or parts of the section, as the case may be, who reside in the township, shall desire to have their corners and lines, or any of them, established, re-located, or perpetuated, such surveyor shall proceed to make the required surveys and the expense thereof shall be borne by all the persons benefited, in proportion to the amount of work done for each, to be determined by the surveyor, and if any person thus benefited, whether a non-resident or otherwise, shall refuse or neglect to pay his share of such expense, such surveyor shall certify the same, and to whom due, to the supervisor of the proper township, who shall assess it upon the land of such person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the surveyor's certificate, as being entitled to the same. § 2488.

1135. **When Party Requesting Survey Refuses to Pay.**—If any person, after having requested the county surveyor to establish, relocate or perpetuate the corners and lines of land owned by such person, refuses or neglects to pay for such services after due performance thereof, such surveyor shall certify the lawful charges for the same and to whom due to the supervisor of the proper township, who shall assess it upon the land so surveyd, to be collected and paid to the county treasurer in the same manner as State and county taxes, and paid by the said county treasurer on the order of the county surveyor. § 2489.

1136. **Tax for Township Library.**—When such tax shall have been voted by the township the same shall be reported to the supervisor and shall be assessed and collected the same as other township taxes. See Sec. 89 of this Guide.

1137. **Supervisor to Assess Judgments Against Townships.**—The party in whose favor such judgment is rendered shall procure and file a certified transcript thereof with the supervisor, whose duty it shall be to assess the amount thereof with the costs and interest from the date of the rendition of judgment to the time when the warrant for the collection thereof will expire. The supervisor shall also set forth such judgment in the warrant attached to his tax roll, stating the amount thereof and to whom payable. He shall also deliver to the township clerk a written statement, setting forth in detail each judgment, stating the amount of each, with costs and interest and to whom payable. See Secs. 49 and 50 of this Guide.

1138. **Levy of Bridge Tax in Excess of One Thousand Dollars.**—Any moneys voted for such purpose shall be reported to the supervisor and included in the next ensuing tax levy. See Sec. 228 of this Guide.

1139. Levy of Expenditures for Cutting Noxious Weeds.—The supervisor of the township shall add to all such expenditures as have been so audited and allowed ten per centum of the amount of such expenditures and shall cause all such expenditures, together with the additional ten per centum, to be severally levied on the lands on which such expenditures were made, and the same shall become a lien upon said land and shall be collected in the same manner as other township taxes are collected; the same when collected shall be paid into the general township fund to reimburse the outlay therefrom aforesaid. § 4607.

The expenditures referred to are those incurred for cutting Canada thistles and other noxious weeds as provided for in Chapter XXIV of the General Highway Law, being Sections 1753 to 1762 of this Guide.

1140. Supervisor to be Furnished Statement of Stock, Etc.—It is the duty of the clerk of every corporation, whose capital stock is subject to taxation for county or township purposes, and if there be no such clerk, then of the directors of such corporation, annually, between the fifteenth day of March and the first day of April, to make returns in person or by mail, to the supervisor of each township, in which any shareholder in such corporation shall reside; which return shall state the name of each owner residing in such township, the number of shares belonging to each on the fifteenth day of March of that year, and the par value of such shares. § 11388.

1141. U. P. Copper Companies to Make Statement to Supervisor.—Every corporation, partnership, or person engaged in the business of mining or smelting copper, or any person, partnership, or corporation owning or holding such copper in the Upper Peninsula, shall, on or before the first Monday of May in each year, deliver to the supervisor or other assessing officer of each township, village or city in which such corporation, partnership, or person had, on the twenty-fifth day of April preceding, any copper, whether smelted or unsmelted, in their possession or under their control, a true and correct statement, specifying:

First, The amount in weight of such copper, and whether smelted or unsmelted;

Second, Its cash value;

Third, The township in and the premises upon which it is stored;

Fourth, The name and residence of the owner of the same, or if belonging to a corporation, the name and place of business of such corporation. § 4178.

1142. Statement to be Verified by Oath.—Such statement shall be verified by the oath of the superintendent or agent of such corporation or partnership, or of some member thereof, or of said person, or of some person having full knowledge of the facts therein stated; and any person who shall make an affidavit as above required, shall be liable to the penalties of perjury for any false statement made in such affidavit with intent to defraud, upon conviction thereof before a court having jurisdiction of the offense. Such copper shall not be assessed in other townships than as herein provided. § 4179. See also § 4180, C. L. of 1915.

1143. When to Transmit Statement to Other Supervisor.—Every supervisor, or other assessing officer, upon receiving any such statement from which it shall appear that there was in his township, village or city on the twenty-fifth day of April, any copper, whether smelted or un-

smelted, belonging to any resident of or corporation having its office in this State, shall at once transmit to the supervisor of the township in which such owner resides, or such corporation has its office, a certified copy of that portion of the statement relating to such copper. § 4181.

1144. Supervisor to Assess Copper as Personal Property.—Every supervisor or other assessing officer shall estimate and assess upon his assessment roll all copper belonging to residents of his township, or nonresidents of the State, in the same manner and for the same purposes that other personal property is assessed. § 4182.

CHAPTER VIII.

DUTIES OF SUPERVISOR RELATIVE TO COLLECTION OF STATISTICS.

1145. Statistics of the Insane, Deaf, Dumb and Blind.—It is the duty of the supervisor or assessor of each township and ward in this State at the time of making his general assessment and assessment roll for his township or ward in each year, to ascertain and set down in a blank prepared for that purpose, the names of all insane, deaf and dumb, blind, epileptic, and idiotic persons in his township or ward, showing the person's age, general health, habits and occupation; the kind, degree, and duration of such affliction; the sex; whether married, single, or widowed; the time under medical treatment; the pecuniary ability of the person thus afflicted, and of the relatives of such person liable for his or her support; whether supported wholly or in part by the public, and such further information relative to these classes of persons as may be thought useful. Such supervisor or assessor shall deliver said blank to the county clerk of his county on or before the first day of June, and the county clerk shall forthwith transmit said blank to the secretary of state, who shall present an abstract of the information thus obtained to the governor on the thirtieth day of September, or as soon as practicable thereafter. § 5638.

The secretary of state shall, each year, before the first day of April, transmit to each county clerk a sufficient number of blanks, to be distributed by such clerk to the supervisors or assessors of his county, to be used in carrying out the provisions of this act. § 5639.

1146. Registrar to Deliver List of Births to Supervisor.—On or before the tenth day of April in each year, every local registrar shall make out a complete list, on a blank provided by the secretary of state for that purpose, of the births that have occurred in his district during the preceding calendar year, as registered with him, showing names of parents and dates of birth, and shall on or before the tenth day of April, deliver the same to the supervisor of the township where the births occurred. § 5620.

1147. Supervisor to Verify List.—The supervisor shall receive such lists of births, and between the tenth of April and the first day of June shall make diligent inquiry to ascertain whether any other births have occurred in their townships, besides those duly registered and reported to them by the local registrars. And if any such births, not heretofore registered, shall come to their notice, then they shall immediately fill out a certificate of birth, as required by this act, signing the certificate as supervisor, and shall file the same with the local registrar, together with

a statement of the name and address of the physician, midwife, or person responsible for failure to file the certificate of birth immediately after birth, as required by this act, and for each added certificate of birth, duly and properly filled out and filed with the local registrar, the supervisor shall be entitled to twenty-five cents, to be paid by the county treasurer upon warrant from the secretary of state. § 5620.

NOTE: The former duties of supervisors in the return of births and deaths have been superseded by those of the township clerks, who have been made registrars for that purpose, except so far as contained in Sections 1145 and 1146 above.

1148. To Collect and Return Information for Bureau of Labor.—It is the duty of the several supervisors in this State, at the time of assessing the property thereof, to obtain the facts and information determined upon by the bureau of labor, in accordance with the terms, conditions, and requirements of the blanks furnished by said bureau, and to return said blanks properly filled and duly certified to, by such officer, without delay to the commissioner of labor at Lansing. § 5327.

1149. To Make List of Physicians.—It shall be the duty of the assessing officer at the time of making the annual assessment to make out a list of physicians residing within his township, village or district, with the name, age and sex of each, and the length of time each has been engaged in practice. Such list shall be returned by the assessing officer to the county clerk. § 6733.

CHAPTER IX.

DUTIES OF SUPERVISOR RELATING TO PENALTIES AND FORFEITURES.

1150. When Supervisor to Prosecute for Penalties and Forfeitures.—The supervisor of each township shall prosecute, in the name of the people of this State, or otherwise, as may be necessary, for all penalties and forfeitures incurred within his township, and for which no other officer is specially directed to prosecute. § 2110.

1151. Duty When Penalty is Recoverable Before Justice.—It shall be the duty of every supervisor whenever he shall know or have good reason to believe that any penalty or forfeiture has been incurred within his township, which shall be recoverable by action before a justice of the peace, according to the foregoing provisions of this chapter, forthwith to commence and prosecute a suit, in the name of the people of this State, for the recovery thereof. § 13404.

NOTE: The chapter referred to is Chapter XXXV, C. L. 1915, which provides that in all cases not otherwise specially provided for by law, where a pecuniary penalty or forfeiture shall be incurred by any person, and the act or omission for which the same is imposed, shall not be also a misdemeanor, such penalty or forfeiture may be recovered in an action of assumpsit; and if it be a perfection of any property, it may be sued for and recovered in an action of trespass on the case.

1152. Other Officers Shall Report Penalties and Forfeitures to Supervisor.—It shall be the duty of every other township officer, who shall know or have good reason to believe that any penalty or forfeiture has been incurred within his township, forthwith to give notice thereof to the supervisor. § 13405.

1153. Duty When Penalty Cannot be Recovered Before Justice.—Whenever any supervisor shall know or have good reason to believe, that

any penalty, or forfeiture has been incurred within his township, which cannot be recovered before a justice of the peace, it shall be his duty forthwith to give notice thereof to the prosecuting attorney of his county. § 13406.

1154. **May Request Prosecuting Attorney to Prosecute.**—In the cases mentioned in the last preceding section, and in all other cases where the prosecuting attorney shall know, or have good reason to believe that a penalty or forfeiture has been incurred within his county, it is the duty of such prosecuting attorney, without delay, to prosecute for such penalty or forfeiture; and in all cases where any suit shall be instituted by the supervisor as provided in this chapter, it is the duty of such prosecuting attorney, if requested by such supervisor, to attend to and conduct such suit on behalf of the plaintiffs. § 13407.

NOTE: This section makes it the duty of the prosecuting attorney of a county to prosecute not only when notified by the supervisor of a township that a penalty or forfeiture has been incurred within his township which cannot be recovered before a justice of the peace, but in all other cases where he shall know, or have good reason to believe, that a penalty has been incurred, and he, as well as the supervisor, is the agent pointed out by the statute to represent the people in all such prosecutions.—People v. Brady, 90 / 459.

1155. **To Sue for Neglect by Owner to Kill Dog.**—Whenever the owner or keeper of any dog, which has been chasing, worrying, wounding or killing any other person's sheep, lamb, swine or cattle, outside of the owner's enclosure, or has assaulted or bitten any person while peaceably walking or riding without the enclosure of such owner or keeper, shall neglect to cause said dog to be killed within forty-eight hours after having received notice in writing, he shall forfeit the sum of three dollars and the further sum of one dollar and fifty cents for every forty-eight hours that such neglect shall continue thereafter until such dog shall be killed, and it is made the duty of the supervisor on complaint in writing being made to him, verified by oath or other testimony satisfactory to him, to bring suit for the recovery of said penalty, and the moneys recovered shall be by him paid into the township treasury, to be applied towards the incidental expenses of the township. See § § 7271-72, C. L. of 1915.

CHAPTER X.

DUTIES OF SUPERVISOR RELATING TO RIOTOUS ASSEMBLIES.

1156. **Supervisor to Command Riotous Assembly to Disperse.**—If any persons, to the number of twelve or more, being armed with clubs, or other dangerous weapons, or if any persons, to the number of thirty or more whether armed or not, shall be unlawfully, riotously, or tumultuously assembled in any township, it is the duty of the supervisor of such township and of every justice of the peace, living in such township, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the people of this State, to command all the persons so assembled immediately and peaceably to disperse. § 15001.

1157. **Supervisor May Command Assistance of Persons Present.**—If the persons so assembled shall not, upon being so commanded, thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers, to command the assistance of all persons there

present, in seizing, arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded against for their offenses according to law. If any person present, being commanded by any of the magistrates or officers aforesaid, to aid and assist in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command or when required by any such magistrate or officer to depart from the place of such riotous or unlawful assembly, shall refuse or neglect so to do, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted and punished accordingly. § § 15002-3.

1158. **Penalty on Supervisor for Refusal to Perform Duty, Etc.**—If any supervisor, justice of the peace, sheriff or deputy sheriff, having notice of any such riotous or tumultuous and unlawful assembly as is mentioned in this chapter, in the township in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall omit or neglect to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding three hundred dollars. § 15004.

1159. **When Officers May Use Force to Quell Mobs, Etc.**—If any persons, who shall be so riotously or unlawfully assembled, and who have been commanded to disperse, as before provided, shall refuse or neglect to disperse, without unnecessary delay, any two of the magistrates or officers before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law. § 15005.

1160. **When Officers to be Held Guiltless, in Case Persons Should be Killed or Wounded.**—If, by reason of any of the efforts made by any two or more of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person, or any other persons there present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons assisting by their order, or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order, or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid or assist the said magistrates or officers, shall be held answerable therefor. § 15007.

CHAPTER XI.

DUTIES OF SUPERVISOR RELATING TO RETURN OF JURORS.

1161. **Supervisor and Clerk to Make Lists of Jurors.**—The supervisor and township clerk of each township, and the supervisor or assessors, as

the case may be, and aldermen of each ward or assessment district in any city, shall, at the time appointed by law for the review of the assessment roll for each year, make a list of persons to serve as petit jurors, and a list of persons to serve as grand jurors, for the ensuing year; but in no case shall one of their own number be put upon such list. § 12189. See also § 12214.

1162. **Who May be Selected as Jurors.**—The said officers shall proceed to select from the persons assessed on the assessment roll of the township or ward for the same year, suitable persons, having the qualifications of electors, to serve as jurors; and in making such selection, they shall take the names of such only as are not exempt from serving on juries, who are in possession of their natural faculties, and not infirm or decrepit, of good character, of approved integrity, of sound judgment, and well informed, and conversant with the English language, and free from all legal exceptions, and who have not made, and in whose behalf there has not been made, to the officers mentioned in the preceding section, any application to be selected and returned as jurors. § 12190.

1163. **Number of Jurors to be Selected.**—Such lists shall contain not less than one for every one hundred inhabitants of such township or ward, computing according to the last preceding census, and having regard to the population of the county, so that the whole number of jurors selected in the county shall amount at least to one hundred, and not exceeding four hundred, one-half of whom shall be designated as petit jurors, and one-half as grand jurors.—§ 12191.

1164. **Whom Not to Select.**—In making such selection, the said officers shall avoid, as far as practicable, selecting any of the same persons who were actually drawn, and who served as jurors, during the preceding year. § 12192.

1165. **Duplicate Lists to be Made.**—Duplicate lists of the persons so selected shall be made out and signed by the officers making such selection, or the major part of them, and within ten days thereafter one of each of said lists shall be transmitted to the county clerk, and the other shall be filed with the clerk of the township, or assessor of the ward, as the case may be. § 12193.

1166. **What Persons Exempt from Serving as Jurors.**—The following persons shall be exempt from service as jurors, to-wit: All officers and employes of the United States; all officers and employes of the State of Michigan; all county officers and their deputies; all judges of courts of record; all attorneys and counselors; all officers and teachers of colleges and incorporated academies; all settled ministers of the gospel; all superintendents, engineers and conductors of any railroad; all constant ferrymen; all members of any legally organized fire department; all members of the Michigan National Guard; all registered pharmacists; all practicing physicians, surgeons and dentists; and all persons more than sixty-five years of age. § 12207.

The following persons also are exempt from service as jurors: Keepers of poorhouses (§ 5224, C. L. of 1915), officers of asylums for the insane and all attendants and assistants actually employed therein during the time of such employment (§ 1317); also the wardens, clerks, deputies, keepers, guards, and other necessary attendants, of the State prisons

(§ 1721); members of fire departments in any city or incorporated village (§ § 2761, 3208 and 3463.)

1167. Special Provisions Applicable to U. P. and Certain Counties.—The provisions contained in this chapter for making lists of jurors do not apply to the Upper Peninsula, for which special provisions are found in § § 14596-14601.

Special acts also provide for jury commissions in Bay, Berrien, Kent, Macomb, Saginaw, St. Clair, and Wayne counties.

1168. Discrimination on Account of Race or Color Forbidden.—That no citizen of the State of Michigan, possessing all other qualifications which are or may be prescribed by law, shall be disqualified to serve as grand or petit juror in any court of said State on account of race or color, and any officer or other person charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than one hundred dollars or imprisoned not more than thirty days, or both. § 15572.

CHAPTER XII.

DUTIES OF SUPERVISOR UNDER ACT TO ENCOURAGE PRIVATE FORESTRY.

1169. Description of Private Reservations to be Certified to Supervisor.—It shall be the duty of the treasurer of each county to keep a record of all private forest reservations within such county as the same may be selected by the owner or owners thereof under this act; and said treasurer shall, on or before the first Monday in April in each year, certify to the supervisor or assessor of each township a description of the selected private forest reservations therein, and the name of the owner or owners thereof. Act 86 of 1917, Sec. 8.

1170. Supervisor to Keep Record.—It shall be the duty of the supervisor or assessor in each township to keep a record of all private forest reservations within his township as certified to him by the treasurer of said county, and he shall require the owner or his agent to subscribe under oath the extent and description of the land selected as private forest reservation and that the number of trees is as required by this act and that he will maintain the same according to the intent of this act. Act 86 of 1917, Sec. 9.

1171. Duties of Supervisor as to Cutting and Removal of Timber on Private Reservations.—It shall be the duty of the supervisor or assessor to personally examine the various private reservations when the real estate is assessed for taxation, and to note upon his return, the condition of the trees, and that same are properly planted and continuously cared for, in order that the intent of this act may be complied with. If the said private reservation is properly planted and continuously cared for in accordance with the provisions of this act, such part of its value as is over and above one dollar per acre shall be exempt from all taxation: Provided, When any owner of a forest reservation provided for in this act shall desire to cut and harvest trees in said reservation, except for firewood or building material for the domestic use of said owner or his tenant, he shall notify the tax assessor of his district of his said intention

and after such trees are cut, and before their removal from the land, the owner shall make an accurate measurement or count of all the trees cut, and file with the assessor a true and accurate return of such measurement or count and of the variety and value of the trees so cut. The assessor shall forthwith assess the stumpage value of the timber so cut and shall issue a license to remove said timber, which license shall be in effect upon payment to the collector of taxes of the district of a fee of five per cent of such appraised valuation. The assessor shall notify the clerk and the tax collector of his district of the issuance of such license. If any such timber is removed without payment of such license fee, it shall be the duty of the tax collector to levy upon such timber for collection of such license fee in the manner provided by law for collection of personal taxes. If the owner of any such forest reservation desires at any time to withdraw his land from such classification, or fails to comply with the provisions of this act, the tax assessor of his district shall estimate the cash value of the timber on the stump and the owner shall pay a fee of five per cent of such appraised valuation; and, on his refusal or neglect to make such payment, the tax collector shall levy upon such timber for collection in such fee in the manner provided by law for the collection of personal taxes. Act 86 of 1917, Sec. 11.

CHAPTER XIII.

DUTIES OF SUPERVISOR RELATING TO THE SUPPORT OF THE POOR.

1172. When Supervisor to Remove Person to Poorhouse.—When any poor person or persons shall apply for relief to a county superintendent of the poor, or to the supervisor of any township, city, or ward, the said superintendent of the poor, or supervisor, shall make immediate personal inquiry into the state and circumstances of the applicant; and if it shall appear that the person so applying is in such indigent circumstances as to require permanent relief and support, and can be safely removed, such superintendent or supervisor shall, by a written order, cause such poor person to be removed to the county poorhouse, to be received and provided for as his necessities may require. § 5213.

LIABILITY OF TOWNSHIP: The law raises an implied promise on the part of a township chargeable with the support of a pauper, to furnish such support. A township is liable for necessaries furnished a poor person, with whose support the township is chargeable, after due notice to the supervisor that such person is a township charge, and his refusal or neglect to furnish such support. The commencement of a suit against a township, by a person who is receiving a certain sum per month for the support of a pauper, to recover a greater sum, is notice that the amount so received is deemed insufficient. Nowhere in the statutes relating to the support of the poor by townships is the amount to be expended by any one person limited, or is it at all placed in the discretion of the supervisor, or any other township officer, to determine who is a poor person, or the amount to be expended in his behalf.—Eckman v. Township of Brady, 81 / 70.

1173. When Supervisor to Give Temporary Relief.—If it shall appear that any poor persons so applying for relief, requires but temporary or partial support, or is so sick, lame, or otherwise disabled that such person cannot be safely or conveniently removed to the poorhouse, then the superintendent or supervisor may cause provisions to be made, under his own direction, for the temporary or partial relief and support of such poor person, which support, when furnished by a supervisor, shall in no case exceed the sum of twenty dollars in any one year, unless by the consent, in writing, of a county superintendent of the poor. § 5213.

TEMPORARY NEEDS: A supervisor has no authority to bind the township by the em-

ployment of a physician to perform an operation at an agreed price of $50. He has no authority to incur any liability except for small sums and to meet pressing temporary needs.—Barber v. Saginaw, 34 / 53.

1174. Supervisor to Make Itemized Report of all Cases of Temporary Relief.—In all cases where relief has been afforded as provided in the preceding section, the supervisor shall, within ten days, make in writing to the superintendents of the poor of the county, a report of his doings in every case of relief so afforded, specifying the articles furnished, and the value of each item thereof, and the names of the persons relieved, and shall also file a copy of said report with the clerk of the township where such supervisor resides, and the said supervisor shall make to the board of supervisors at their annual meeting a statement in writing showing the number of persons to whom such temporary relief has been granted, and the names of such persons and the amount granted to each with the items of such expenditures and also the number of persons, with the names of each, removed to the county poorhouse from each township by the order of the supervisor of such township and the date of such removal. § 5215.

1175. Payment and Limit of Temporary Relief.—The supervisor of the township, city, or ward shall be entitled to receive from the superintendents of the poor, an order on the county treasurer for any sum which he may have paid out or contracted to pay, within the amount specified in Sec. 1173; but no greater sum than twenty dollars shall be so expended or paid for relief of any one person or one family, without the sanction in writing of the superintendents of the poor of the county. § 5216.

1176. Suit to Cover Aid Given Poor or Indigent Person.—If any person shall receive aid or assistance from any county, township, city or village in this State as a poor or indigent person, and shall thereafter be found to have been the owner of property either real or personal, at the time such aid was received, the superintendents of the poor of the county or the proper official of any township, village or city by which such aid or assistance has been extended may bring a suit at law in any court of competent jurisdiction to cover the value or amount of such aid or assistance, together with interest. On the death of any such poor or indigent person the superintendents of the poor of the county or the proper official of any township, village or city by which aid has been thus extended, may petition the probate court having jurisdiction in the premises for the administration of the estate, if any, of such poor or indigent person; and the kind or value of assistance rendered such person shall be a valid claim against his estate: Provided, That no claim arising by virtue of the provisions of this section shall be barred by any statute limiting the time within which action may be brought to recover on any claim, account or cost of action. Act 20 of 1917, Sec. 1.

1177. Compensation of Supervisor.—Supervisors are entitled to a compensation of three dollars for each day, and at the same rate for parts of a day actually and necessarily devoted by them to the care of poor persons. See Sec. 282 of this Guide.

1178. Supervisor to Furnish List of Indigent Soldiers to Relief Commissioners, Etc.—The supervisor of each township and ward in each of the counties of this State, and where there is no ward supervisor the aldermen of the several wards of every incorporated city in this State, shall, on or before the last Monday in September in each year, make and place in

the hands of the soldiers' relief commission of the county, a list of all the persons entitled to relief under the provisions of the act to provide relief for indigent soldiers, sailors and marines and the indigent wives, widows and minor children of such soldiers, sailors and marines. § 1694.

1179. **When Supervisor May Grant Emergency Relief to Soldiers, Etc.**—Whenever any emergency shall arise in case of sickness, accident or death, which in the opinion of any supervisor needs relief, such supervisor, when inconvenient to consult any of the commission, shall have power to draw an order on the county treasurer for a sum not to exceed ten dollars, and shall certify his action and the circumstances of the case to such soldiers' relief commission, which shall ratify the same, and such commission may grant such further relief at any time as they may deem necessary; but no claim for relief shall be allowed which shall create a deficiency in the fund. § 1695.

1180. **Relief Commission to Report to Board of Supervisors.**—Said soldiers' relief commission shall make to the board of supervisors, at its October session in each year, a full report of its doings, the amount of relief fund on hand, the amount expended during the year preceding, and the amount estimated for the year ensuing, and such further information and suggestions as they may consider necessary in the discharge of their duties under this act. § 1696.

1181. **Disposition of Unexpended Balance.**—In cases where moneys have heretofore been raised by any township under the provisions of the act hereby repealed (Act 193 of 1889), the balance of moneys unexpended on the first day of April, nineteen hundred, may, by a vote of the township board, be transferred to and made a part of the general fund of such township, and thereafter no such tax shall be levied, except as provided in this act. § 1697.

1182. **Supervisor to Pay Certain Moneys to County Treasurer.**—All moneys which shall be collected by any superintendent, or by the supervisor of any township, city or ward, or received by any of them on any bond or other security given for the benefit or indemnity of any county, or of any township, city or ward, and all other moneys which shall be received by such superintendent or supervisor for the benefit of the poor, shall be by them paid over within fifteen days after the receipt of the same, to the county treasurer; and if not so paid, the same may be recovered in an action as for money had and received, to be brought by and in the name of the county treasurer, with interest at the rate of ten per cent from the time the same should have been paid over. § 5229.

1183. **Account of Supervisor, how Audited and Settled.**—The accounts of the supervisors and of justices of the peace, for any personal or official services rendered by them in relation to the poor, shall be audited and settled by the superintendents, and be paid on their order by the county treasurer; but no allowance shall be made to any officer for attending any board with accounts, for the purpose of having the same audited or paid. § 5232.

1184. **Who to be Township Charge.**—In those counties in which the distinction between township and county poor shall not be abolished by the board of supervisors, the poor having a settlement in any township in such counties shall be supported at the expense of such township, and

the poor not having such settlement shall be supported by the county in which they may be, as hereinbefore provided. § 5237.

NOTE: The board of supervisors, by a two-thirds vote of all the members elected, has power to abolish or revive the distinctions between township and county poor. § 2274, Subd. 11. § 2275 and § 5259.

1185. Who Deemed to be Settled in Township.—Every person of full age who shall have been a resident and inhabitant of any township for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such township. § 5238.

1186. How Minor May Gain Settlement.—A minor may be emancipated from his or her father, and may gain a settlement—

First, If a female, by being married and living one year with her husband, in which case the husband's settlement shall determine that of the wife;

Second, If a male, by being married and residing separately from the family of his father;

Third, By being bound as an apprentice, and serving one year by virtue of such indentures;

Fourth, By being hired, and actually serving for one year for wages to be paid such minor. § 5238.

1187. How Pauper May Acquire Settlement.—A woman of full age, by marrying, shall acquire the settlement of her husband, if he have any; and until a poor person shall have gained a settlement in his own right, his settlement shall be deemed that of his father or mother; but no child born in any place used and occupied as a residence for the poor of the township, city or county, shall gain any settlement merely by reason of the place of such birth; nor shall any child, born while the mother is a county pauper, gain any settlement by reason of the place of its birth; and no residence of any person as a pauper, in the county poorhouse, or place provided for the support of the poor in any township, while supported at the expense of any township or county, shall operate to give such pauper a settlement in the township where such actual residence may be had. § 5239.

1188. Where Paupers to be Supported.—No person shall be removed as a pauper from any city or township to any other city or township of the same or any other county, nor from any county to any other county, but every poor person shall be supported in the townhsip, city, or county where he may be, as follows:

First, If he has gained a settlement in any township or city in such county he shall be maintained by such township or city;

Second, If he has not gained a settlement in the county in which he shall become poor, sick, or infirm, he shall be supported by the superintendents of the poor, at the expense of the county;

Third, If such person be in a county where the distinction between township and county poor is abolished, he shall in like manner be supported at the expense of the county, and in both of the cases aforesaid, proceedings for his relief shall be had as hereinbefore provided;

Fourth, If such pauper shall be in a county where the respective townships are liable to support their poor, and has gained a settlement in some other township or city of the same county than that in which he may then be, he shall be supported at the expense of the township or city

where he may be, and the supervisor shall give notice in writing to the supervisor of the township, or the director of the poor of the city, to which such pauper shall belong, or to one of them, requiring them to provide for the relief and support of such pauper. § 5240. [See Form No. 72.]

1189. **Duty of Supervisor in Contesting Settlement of Pauper.**—If within ten days after the service of such notice, the supervisor or director of the poor to whom the same was directed, shall not proceed to contest the allegation of the settlement of such pauper, by giving the notice hereinafter directed, such supervisor or director of the poor, their successors, and the township or city which they represent, shall be forever precluded from contesting or denying such settlement. Such supervisor or director of the poor may, within the time aforesaid, give notice in writing to the supervisor of the township, or the director of the poor of the city where such pauper may be, that he will appear before the superintendents, at a place, and on a day therein specified, which day shall be at least ten days, and not more than thirty days from the time of the service of such notice, to contest the said alleged settlement. The county superintendents are hereby authorized, for such purposes, to issue subpoenas to compel the attendance of witnesses, and to administer oaths in the manner, and with the same power to enforce such process, as is given justices of the peace in any matter cognizable by them. Their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested. § 5241.

1190. **Supervisor May Require Superintendents to Hear Contest.**—The county superintendents shall convene whenever required by any supervisor, pursuant to such notice, and shall proceed to hear and determine the controversy, and may award costs, not exceeding ten dollars, to the prevailing party, which may be recovered in any action before a court of competent jurisdiction. § 5242.

1191. **When Supervisor May Support Pauper.**—The supervisor of the township in which it may be alleged any pauper has gained a settlement, may at any time after receiving such notice requiring him to provide for such pauper, take and receive such pauper to his township, and there support him. If he omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate him from the maintenance of such pauper, the charge of giving such notice, and the expenses of maintaining such pauper, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings, from year to year, as long as such expenses shall be incurred; and the supervisor shall annually add the amount of the said charges to the tax to be laid upon the township to which the pauper belongs, together with such sum in addition thereto as will pay the township incurring such expenses the lawful interest thereon, from the time of expenditure to the time of payment, which sums shall be assessed, levied, and collected in the same manner as the other contingent expenses of such township. The said moneys, when collected, shall be paid to the county treasurer, and be by him credited to the account of the township which incurred the said expense. § 5243.

1192. **When Support of Paupers in Poorhouses Charged to Township.**—The support of any pauper shall not be charged to the county without

the sanction of the superintendents. If a pauper be sent to the county poorhouse, or place provided for the poor, as a county pauper, the superintendents in those counties where the respective townships are required to support their own poor, shall immediately inquire into the fact, and if they are of opinion that such pauper has a legal settlement in any township of the said county, they shall, within thirty days after such pauper shall have been received, give notice to the supervisor of the township to which such pauper belongs, that the expenses of his support will be charged to such township, unless the said supervisor, within such time as the said superintendents shall appoint, not less than twenty days thereafter, show that such township ought not to be so charged. And on the application of the said supervisor, the superintendents shall re-examine the matter, and take testimony in relation thereto, and shall decide the question, which decision shall be final. § 5244.

1193. Decision Relating to Settlement of Pauper.—The decisions of the board of county superintendents, in relation to the settlement of any paupers, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signatures of such of the said superintendents as make such decisions; and a duplicate thereof, certified in the same manner, shall be filed in the county clerk's office within thirty days after the making of any such decision. Such original, or a copy thereof, duly certified, shall be conclusive evidence of the facts therein contained. § 5245.

1194. Accounts Between County and Township.—In those counties where the respective townships are required to support their poor, the county treasurers thereof shall respectively open and keep an account with each township, in which the township shall be credited with all the moneys received from the same, or from its officers, and shall be charged with the expense actually incurred by the superintendents for the support of such of the township poor as may be supported at the county poorhouse, and chargeable to such township, if there be a county poorhouse or other place provided in such county for the support of the poor; and the superintendents of the poor of the county shall, in each year, before the annual meeting of the board of supervisors of such county, furnish to the county treasurer a statement of the sums charged by them, as hereinafter directed, to the several townships for the support of their poor at the county poorhouse, which shall be charged to each township respectively by the county treasurer in his accounts. In determining the amount of such expense, no estimate shall be made of the original expense incurred in the purchase or building of such poorhouse, and the real estate belonging therewith, and the permanent and valuable improvements made thereon. § 5246.

1195. Annual Statement and Apportionment of Deficiency.—In those counties in which a poorhouse shall be established, or a place provided by the superintendents for the reception of the poor, and in which the several townships shall be liable for the support of their poor therein respectively, it shall be the duty of the superintendents annually, and during the week preceding the annual meeting of the board of supervisors, to make out a statement of all the expenses incurred by them the preceding year, and of the moneys received, and exhibiting the deficiency, if any,

in the funds provided for the defraying of such expenses; and they shall apportion the said deficiency among the several townships, in proportion to the number and expenses of the paupers belonging to the said townships respectively, in the manner provided for in the preceding section, who shall have been supported at the county poorhouse, and shall charge said deficiencies to the townships liable therefor; which statement shall be by them delivered to the county treasurer, as before directed. § 5247.

1196. **Deficiency to be Added to Township Tax.**—At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account so kept by him; and if it shall appear that there is a balance against any township, the board shall add the same to the amount of taxes to be levied and collected upon such township, with the other contingent expenses thereof, together with such a sum for interest, at the rate of seven per centum per annum, as will reimburse and satisfy any advances that may be made, or that may have been made from the county treasurer for such township, which moneys, when collected, shall be paid to the county treasurer. § 5248.

1197. **Supervisor Shall Lay Accounts Before Township Board.**—On the second Tuesday preceding the annual township meeting of every township, the supervisors of their respective towns shall lay the said original books before the township board, together with a just and true account of all moneys by them received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed, which account shall be verified by the oath of the supervisor, and shall be filed with the township clerk. The township board shall compare the said account with the entries in the poor-books aforesaid, and examine the vouchers in support thereof, and shall audit and settle the same, and state the balance due from such supervisor, or to them, as the case may be. No credit shall be allowed to any supervisor for moneys paid, unless it shall appear that such payment was made pursuant to a legal order. § 5249.

1198. **Penalty for Not Presenting Said Accounts, Etc.**—Every such supervisor who shall refuse or neglect to present such original books, or to exhibit such accounts to the township board, as required in the preceding section, shall forfeit the sum of two hundred and fifty dollars, to be recovered by and in the name of the treasurer of such township. § 5250.

1199. **Supervisor to Present Estimates for Support of Poor.**—In those counties where the respective townships are made liable for the support of their poor, it is the duty of the township clerk to examine, at the annual township meetings, the accounts for the support of the poor therein the preceding year, as the same shall have been allowed and passed by the township board, which accounts shall be openly and distinctly read by the clerk of the meeting; and the supervisors of their respective towns shall also present an estimate of the sum which they shall deem necessary to supply any deficiency of the preceding year, and to provide for the support of the poor for the ensuing year. § 5251.

1200. **Supervisor to Sue for Penalty.**—Whenever it is made to appear to the satisfaction of any supervisor, either upon complaint or otherwise, that a penalty has been incurred by the violation of any provisions of the laws of this State, which such supervisor is required by law to collect, it

shall be his duty immediately to commence a suit for such penalty, and to prosecute the same diligently to effect. § 5254.

1201. Supervisor to Report to Board Number of Paupers and Expense of Support.—It is the duty of the supervisors of such townships which make their poor a township charge, on or before the first day of April in each year, to report to the township board of their respective townships, in such form as they shall direct, the number of paupers that have been relieved or supported in such township the preceding year, and the whole expense of such support. § 5257.

1202. Penalty for Neglect to Report, Etc.—Any supervisor who shall neglect or refuse to make such report, or who shall wilfully make any false report, shall be guilty of a misdemeanor, and on conviction thereof be subject to a fine of not exceeding one thousand dollars, to be recovered by the prosecuting attorney of the county, in the name of the people of this State, and to be paid into the township treasury. § 5258.

1203. Supervisor to Make Annual Statements to County Superintendents.—It is the duty of any director or overseer of the poor authorized by law to furnish relief to poor persons and of the supervisor of each township, district, or ward in this State on the last day of September, and on the last day before his term of office shall expire, to make and transmit to the county superintendents of the poor of the county in which such township, district or ward is situated a full statement or report of the number of poor persons relieved or maintained by him since the date of his last report, with the names of the heads of families and the number of persons in each family, also the names of persons not members of any family who have received assistance and the causes of their indigence, if he can ascertain the same, the amount paid for transportation, for medical attendance and for funeral expenses, also his charges for services, and any and all other facts and expenditures necessary to a complete showing of his transactions and of the conditions of such persons. Said report shall be made in such form as the secretary of state shall prescribe, and the secretary of state shall prepare and annually transmit blanks for that purpose to the county superintendents of the poor, who shall distribute them to the several directors and overseers of the poor and supervisors in their respective counties; and such reports shall be made by the directors, overseers and supervisors in the counties where the poor are made a township or city charge, as well as in counties where they are all made a county charge, and any supervisor, director, or overseer who shall neglect or refuse to make such report shall be guilty of a misdemeanor, and on conviction thereof may be punished as prescribed by law for the commission of such offenses. § 5298.

1204. Compensation of Supervisor for Making Reports, Etc.—Every supervisor, director or overseer of the poor who shall make the reports herein provided for shall receive as full compensation therefor the sum of five cents each for the first twenty-five families and persons not members of any family so relieved, and the sum of three cents for each of such families and persons above that number, to be paid by the county treasurer out of the general fund on the certificate of the superintendents of the poor that said reports have been made in all respects as required by law, but no supervisor, director, or overseer shall receive less than twenty-

five cents for each report so made out and forwarded to the superintendents of the poor. § 5299.

1205. **Request by Supervisor for Admission of Children to State Public School.**—In those counties in which the distinction between township and county poor is maintained, it shall be the duty of the superintendents of the poor of such counties, on the written request of the supervisor of such township, to act for such township in securing the admission of dependent children of such township, to said school, in all respects as though such children were supported by the county. § 1511.

1206. **When Supervisor May Appear for Child.**—On the examination, upon the petition of the superintendents of the poor to determine the dependence of a child on the public for its support and for its admission to the state public school, the judge may, in his discretion, request the supervisor of any township to appear in behalf of the child. § § 1507, 1508.

CHAPTER XIV.

MISCELLANEOUS PROVISIONS OF LAW RELATING TO THE SUPERVISOR.

1207. **Maintenance of Political Purity.**—It is the duty of the supervisor to issue a proclamation within five days previous to the days of an election, warning the inhabitants of the provisions of § § 15169-78, which forbid the giving or promising of any valuable consideration, any office or place, the making of any gift or loan to any voter, or the asking of any such consideration by any voter; the giving of any drink or refreshment for the purpose of influencing any elector; or the opening of any saloon, or the selling or giving away of intoxicating liquors, on the day of any election, etc. See § 15177.

1208. **Supervisor to Make List of Dogs.**—It shall be the duty of each supervisor or assessor at the time of making his annual assessments to make a list of the dogs within his assessing district and to make a report thereof direct to the township or village clerk within thirty days after such assessment has been made. Act 347 of 1917, Sec. 4.

1209. **Supervisor and Commissioner May Purchase Plank or Toll Road.**—The supervisor and commissioner of highways may negotiate and contract for the purchase of a plank or toll road, and if such contract be ratified by the electors, they may draw their orders for the amount of the contract price, and the supervisor shall levy the amount upon the taxable property of the township. § 4481.

1210. **Use of Highway by Plank Road Company.**—The supervisor, with the commissioner, may contract with such company for the use of the highways, etc. § 4529.

The qualified voters of any township may by a majority vote thereon, at any annual meeting, allow any plank or gravel road company to use the highways. See Sec. 1691 of this Guide.

1211. **Supervisor Entitled to Public Acts and Compiled Laws.**—A copy of the public acts of each session of the legislature shall be furnished to each supervisor. § 821.

And the compiled laws are distributed in the same manner as the public acts.

1212. When Supervisor to Distribute Books to Township Officers.—In case of a vacancy in the office of township clerk and deputy township clerk, or their inability to act, then the supervisor shall distribute books, etc., to officers entitled to them. § 853. See Sec. 1244 of this Guide.

1213. Action by Supervisor to Change Location of Toll-Gate.—The supervisor of any township, in which a toll-gate may be located on any such road, whenever he shall be of the opinion that the location of such gate is unjust to the public interest, by reason of the proximity of diverging roads, or for other reasons, may, on at least fifteen days' written notice to the president or secretary of said company, apply to the circuit court of the county in which such gate is located, for an order to alter or change the location of the said gate. The court, on such application, and on hearing the respective parties, and on viewing the premises, if the said court shall deem such view necessary, shall make such order in the matter as to the said court may seem just and proper. Such order shall be observed by the respective parties, and may be enforced by attachment or otherwise, as said court shall direct; and the decision of said court shall be final in the matter; and said court may direct the payment of costs in the premises, as shall be deemed just and equitable. § 8708.

1214. Fires in Woods, Prairies, Etc.—It is the duty of the supervisor, when such fires endanger property, to order out the inhabitants to assist in extinguishing such fires, etc. [See Form No. 73.] See Sec. 2003 of this Guide.

1215. Supervisor to be Furnished with List of Forfeited Lands.—On or before the first day of June in each year, the commissioner of the land office shall prepare and transmit to the clerks of the several counties in which the same are situated, lists of all the forfeited lands in the several townships therein, and of all the unsold university, school and state building lands which he may have cause to believe are improved, together with proper forms of returns and certificates of appraisement, to be forthwith distributed by such clerks respectively to the several supervisors of townships to whom the same may be directed. § 520.

1216. Supervisor to Estimate Value of Improvements, Etc.—Every supervisor of a township, upon receiving the lists and forms as aforesaid, shall proceed to estimate and appraise the value of all the improvements upon the several tracts or parcels of land mentioned in such lists, and after making such appraisement according to the forms prescribed by said commissioner, he shall make returns thereof, duly certified by him, to the commissioner, on or before the first day of August in the same year. § 521.

1217. Supervisor to be Furnished List of State Lands Sold.—It is the duty of the county treasurer on receiving from the commissioner of the state land office, descriptions of land sold by him during the year next preceding, to furnish to the supervisor of the township in which any of said lands are situated, lists of such lands, on or before the first Monday in April. § 569.

1218. Supervisor Required to Spread Tax for Fish Shutes.—In case the owner or user of any dam refuses or fails to construct and maintain a fish shute or fish ladder as provided in this act, the state game, fish and forestry warden may cause to be constructed a suitable fish shute or fish ladder over or through said dam at such place in the dam as will cause

least injury to the water power, and the expense of the construction of such fish shute or fish ladder shall be by him certified to the board of supervisors of the county in which such dam is located, and such expense shall be audited by the board of supervisors and be paid from the general fund of said county. The board of supervisors of any county, upon auditing and allowing such expense, shall by resolution order the supervisor of the township or ward in which said dam is situated to spread the amount of such expense upon the assessment roll of said township or ward as a tax against the property to which said dam is appurtenant and against the owner or owners of such property, to be collected in the same manner as other township taxes and paid over to the county treasurer, or returned as delinquent in accordance with law. § 7627.

1219. Duty of Supervisor as to Danger Signals Where Ice is Being Cut.—It is the duty of any person or persons who are, or who hereafter may be, engaged in the procuring of ice from any of the streams, ponds or lakes of this State to erect, or cause to be erected, place, or cause to be placed, at or near all places where they shall be cutting ice, suitable danger signals and barricades. Such barricades shall consist of cross bars upon which a pole, rope, chain or rail shall be laid at a height not less than three feet above the ice and shall be placed not less than ten feet from the edge of the opening. § 15262.

It is the duty of the harbor-master at all places where there is such an official having control of a stream or lake within this State, and where there is no such an official having control as aforesaid, it is the duty of the supervisor or other assessing officer in whose assessment district such stream or lake is situated to see that the above provisions are complied with. § 15263.

1220. Duties of Supervisors in Ascertaining Damages on Laying Out State Roads, Etc.—The justice of the peace with whom petition has been filed shall notify in writing the supervisor of the township, of the time and place when the petition will be heard, which shall not be less than six nor more than twelve days from the date of the petition. On the date mentioned, the supervisor, if he be present, and the petitioner shall proceed to strike each alternately from the list of twenty-four freeholders written by a constable from which to select a jury, the names of six persons, and the remaining twelve names shall constitute the jury for the purpose of determining said petition. See Sec. 1961 of this Guide.

1221. Issue of New Certificate on Normal and Other School Lands.—The persons desirous of procuring such new certificate shall in every case furnish the commissioner of the state land office, as the basis of his action, with the certificate of the supervisor of the township in which the lands are situated, verified by his oath, that he is acquainted with the true condition, quality and location of said lands, and the proposed division of the same, and that in his opinion such division could be made without injury to the normal school fund, and the said commissioner may require any other evidence which he may deem necessary in the premises. § 535.

Similar provisions apply in case of school and university lands. § 528.

1222. Duty of Supervisor in Classification of Justices.—In new townships, or in case of filling more than one vacancy, the classification of justices shall be made by the supervisor and township clerk. See Sec. 28 of this Guide.

1223. Supervisor to be Township Fire Warden.—The act to provide for the preservation of forests and for the suppression of forest and prairie fires, being § § 765-83, C. L. of 1915, as amended by Acts 300 and 364 of 1917, provides that the supervisor shall be the fire warden of his township and prescribes his powers, duties and compensation.

1224. Supervisor Entitled to Copy of Tax Laws.—The township clerk is required to distribute to each supervisor copy of the tax laws. See Sec. 1245 of this Guide.

1225. Governor May Order Supervisor to Return List of Persons for Military Duty.—The supervisor of every township is required upon an order from the governor to that effect, to return a list of the names of all persons who are liable to perform military duty residing in their township, to the county clerk. See § 877, C. L. of 1915.

1226. Duty of Supervisor Relating to Insane Persons.—The supervisor of any township in which an alleged insane person resides, or may be, may petition the probate court of his county for an order directing the admission of said person to an asylum or institution for the care of the insane, such petition to contain a statement of the facts upon which the allegation of insanity is based and because of which the application for the order is made. § 1325.

Every county, city or town officer to whom application for aid, in behalf of any insane person, shall be made, shall at once report the name and age of such insane person to the secretary of the board of corrections and charities. § 1350.

PART XIII

THE TOWNSHIP CLERK.

CHAPTER I.—General Provisions.
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CHAPTER III.—Duties Under Tax Laws.
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CHAPTER I.

GENERAL PROVISIONS OF LAW RELATING TO THE TOWNSHIP CLERK.

1227. Election, Eligibility, Qualification and Term of Office.—In Parts II and III, devoted to township meetings and township officers, respectively, will be found the various provisions of law relating to the eligibility of persons to the office of township clerk, and the election, qualification and term of office of such officer. It is therefore unnecessary to repeat them here.

1228. Clerk to Have Custody of Township Records, Etc.—The township clerk of each township shall have the custody of all the records, books, and papers of the township, when no other provision is made by law; and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office, and record such as are required by law to be recorded therein. § 2117.

1229. Where Records, Etc., Not to be Kept.—Such records, books, and papers shall not be kept in any saloon, restaurant, public inn, hotel, place of public amusement, nor in any place where intoxicating drinks of any kind are kept or sold, or where gaming or plays of chance of any kind are carried on, nor where they will be exposed to unusual hazard of fire or theft, and he shall deliver the same on demand to his successor in office. § 2117.

1230. To Open Account With Treasurer.—He shall also open and keep an account with the treasurer of his township, and shall charge such treasurer with all funds which shall come into his hands by virtue of his office, and shall credit him with all moneys paid out by him on the order of the proper authorities of the township, and shall enter the date and amount of all vouchers in a book kept by said clerk in said office. § 2117.

1231. To Open Account With Each Fund.—He shall open and keep a separate account with each of the several funds, belonging to his township, and shall credit each of said funds with such amounts as properly belong to them, and shall charge them severally with all warrants drawn

on the township treasurer and payable from said funds respectively. § 2117.

1232. Clerk to Keep Minutes of Township Meeting.—He shall transcribe in the book of records of his township the minutes of the proceedings of every township meeting held therein, and he shall enter in such book every order or direction, and all rules and regulations made by any such township meeting. § 2118.

1233. Clerk to Notify County Treasurer of Appointment of Treasurer.—Whenever the township board shall appoint a township treasurer to fill vacancy, the township clerk shall immediately give notice thereof to the county treasurer. § 2108.

1234. To Return Names and Addresses of Officers Elected.—The township clerk of each township and the city clerk of each city, shall, immediately after the qualifying of the several officers elected or appointed in their respective townships, return to the clerks of their respective counties the names of all such officers, with their respective postoffice addresses. § 2119. [See Form No. 74.]

1235. To Notify County Clerk of the Election of Justices.—Each township clerk shall, immediately after the election of any justices of the peace in his township, transmit a written notice thereof to the county clerk, stating therein the names of the persons so elected, and the terms for which they were respectively elected; and if one or more of them has been elected to fill a vacancy, he shall state in such notice who was the last incumbent of the office. § 2120. [See Form No. 75.]

1236. Clerk to Give Bond, Appoint Deputy, Etc.—Each township clerk shall, within the time limited for filing his oath of office and before entering upon the duties of his office, give a bond to the township in such sum and with such sureties as the township board shall require and approve, conditioned for the faithful discharge of the duties of his office according to law, and especially for the safe keeping of the records, books, and papers of said township in the manner required by law, and for their delivery on demand to his successor in office, which bond shall be filed in the office of the supervisor; he shall also appoint a deputy, who shall take an oath of office and file the same with the clerk, and in case of the absence, sickness, death, or other disability of the clerk, such deputy shall perform the duties of such clerk, and receive the same compensation as the clerk would have been entitled to receive therefor. § 2121. [See Form No. 76.]

1237. Duties of Clerk as a Member of the Several Boards.—For the law defining the duties of the clerk as a member of the township board, board of registration, board of inspectors of elections, and as clerk of the board of health, clerk of the board of fruit and orchard inspectors, see the chapters devoted to those subjects respectively.

1238. To be Clerk of Township Board.—The township clerk shall be the clerk of such board, and shall keep a true record of all their proceedings in his office. § 2126.

1239. To Record Treasurer's Bond and Deliver it to Supervisor.—It is the duty of the treasurer to file, within ten days after notice of election, a bond with the township clerk of such township, who shall record the same in a book to be provided for that purpose. The township clerk

shall, after recording the same, deliver it to the supervisor, who shall file it in his office. § 2134.

1240. Compensation of Clerk.—The township clerk, as clerk of the commissioner of highways, of the township board, and of the board of health, inspector of election, etc., shall receive three dollars per day, and at the same rate for parts of days. See Sec. 282 of this Guide.

1241. Clerk to Post Proposed Constitutional Amendments.—That whenever a proposed constitutional amendment or other question is to be submitted to the electors of the State for popular vote, the secretary of state shall prepare concise statements setting forth the purport, nature and effect of the proposed amendment or other question. And he shall also furnish each county in the State at least ten copies of such statement for each voting precinct. The county clerk of each county shall deliver five of such statements to the city and township clerks of each city and township, for each voting precinct, at least twenty days previous to the date said amendment or other question is to be voted upon, and the city and township clerks shall post said statements in five conspicuous places in each voting precinct in his city or township at least fifteen days previous to the date said amendment or other question is to be voted upon. The county clerk shall also furnish the board of election inspectors of each voting precinct of his county at least five of said statements, to be posted by such board of election inspectors in a conspicuous place in the room of holding such election. Act 61 of 1917, Sec. 1.

CHAPTER II.

THE DISTRIBUTION OF PUBLIC DOCUMENTS, LAWS, ETC.

1242. Clerk Entitled to Compiled Laws and Public and Local Acts.—Act 44 of 1899 (being § 821, C. L. of 1915), provides that a copy of the public acts of each session of the legislature, and a copy of the local acts when any of such acts affect his township, shall be furnished to each township clerk. The compiled laws are distributed in the same manner as the public acts.

1243. Clerk Entitled to Copy of Michigan Manual.—The secretary of state is required to furnish each township clerk with a copy of the Michigan Manual. See § 848. As Am. by Act 325 of 1917.

1244. Duties of Clerk Relating to Distribution of Books and His Compensation Therefor.—It is the duty of the township clerk or his deputy, within ten days after the receipt of the notice for books from the secretary of state, to call for the same and give his receipt to the county clerk, and distribute the books so received to the different officers of his township entitled to the same (clerk, supervisor and justices), taking their receipts therefor and filing said receipts in his office, and transcribing them in a book for that purpose to be delivered to his successor. In case any vacancy occurs in a township office provided with books, the property of the State, which should be turned over to the officer filling such vacancy, it is the duty of the township clerk or his deputy to collect at once all such books and keep them in his custody until he can turn them over to the new officer filling such vacancy, taking his receipt therefor. The township board is hereby authorized and directed to allow

said township clerk or his deputy all just and necessary expenses incurred by him, or a per diem for his compensation, for the performance of the duties imposed upon said township clerk by this section. In case of a vacancy in the office of township clerk and deputy township clerk, or his inability to perform the duties as prescribed in this section, then the supervisor of the township shall perform the same. In case of vacancies or inabilities of the clerk, his deputy, and the supervisor to perform such duties as prescribed above, the justice of the peace of the township whose term of office first expires shall perform these duties until such vacancy or vacancies are duly filled, or inability removed; and either the supervisor or justice of the peace performing such duties, shall be entitled to the same compensation as the clerk, if he had performed the duties. § 823.

1245. To Distribute Copies of Tax Law to Officers Entitled Thereto.—The auditor general shall, from time to time, as he may deem necessary, cause to be printed at the expense of the State, a sufficient number of copies of laws in force relating to the taxation of property, as may be requisite to a full understanding of all the duties of assessing officers, or other State, county or township officers, with proper side notes, index and forms of proceedings, as may be necessary and proper; to furnish one copy to each supervisor, assessor, township clerk and county clerk, and three copies to each county treasurer. Each copy shall be marked "State Property." He shall transmit to each county treasurer, at the expense of the county, a sufficient number of copies for each county, and every county treasurer shall immediately furnish to the township clerk of each township five copies, to be distributed by him to the officers entitled thereto. § 4120.

1246. Clerk to Distribute "Township Officers' Guide."—It is the duty of the township clerk, on receipt thereof from the county clerk, to distribute copies of the "Township Officers' Guide" to the supervisor, clerk, treasurer, commissioner of highways and each justice of the peace of his township. § 2179, C. L. of 1915, and Act 367 of 1917.

CHAPTER III.

DUTIES OF TOWNSHIP CLERK UNDER GENERAL TAX LAW.

1247. To Certify to Supervisor Moneys to be Raised, Etc.—It shall be the duty of the township clerk of each township, on or before the first day of October of each year, to make and deliver to the supervisor of his township, a certified copy of all statements and certificates on file, and of all records of any vote or resolution in his office authorizing or directing moneys to be raised therein by taxation for township, school, highway, drain, and all other purposes, together with a statement of the aggregate amount thereof. § 4030. [See form No. 77.]

Mandamus will lie to compel a supervisor to assess school taxes directed by the board of supervisors to be spread upon his assessment roll pursuant to Sections 36 and 37 of the tax law of 1893, which provide that it shall be the duty of the township clerk to certify all statements of taxes to be raised in his township for presentation to the board of supervisors, and of the board to examine such statements, and direct the spreading of such taxes as shall be authorized by law: such latter section making the action and direction of the board final as to the levy and assessment of such taxes.—Union School District v. Parris, 97 / 593.

The failure of the township clerk to aggregate the several township taxes to be raised in his township in his certificate filed with the board of supervisors, is unimportant, if the several amounts are stated in the certificate.—Boyce v. Auditor General, 90 / 314.

1248. To be Furnished Statement of Taxes and Charge Same to Treasurer.—Before the supervisor or assessing officer shall deliver the assessment roll to the township treasurer he shall carefully foot the several columns of valuation and taxes, and make a detailed statement thereof, which he shall give the clerk of his township, and said clerk shall immediately charge the amount of taxes to the township treasurer. § 4036.

1249. To Notify County Treasurer of Appointment of Township Treasurer.—The township clerk shall immediately notify the county treasurer of such appointment. [See form No. 78.] See Sec. 697.

1250. Proceedings of Board of Review to be Filed With Clerk.—The supervisor or clerk of said board of review shall keep a record of the proceedings of the board and of all the changes made in such assessment roll, and shall file the same with the township clerk with the statements made by persons assessed. § 4027.

CHAPTER IV.

DUTIES OF TOWNSHIP CLERK UNDER HIGHWAY LAWS.

1251. To Record Minutes of Surveys of State or Territorial Roads.—The minutes of surveys of all state and territorial roads are required to be furnished by the commissioner of highways to the township clerk, by whom the same shall be recorded in the same manner that township roads are recorded. See Sec. 1717 of this Guide.

1252. Clerk to Record Agreement With Street Railway Company.—Any company may construct street railway along highway of township upon such terms and conditions as may be agreed upon between the township board and the company, which agreement and acceptance shall be recorded by the township clerk in the records of the township. § 8544. See also Chap. V of Part I, relating to Public Utility Franchises, being Secs. 56 to 68 of this Guide.

1253. Clerk to Give Notice of Submission of Franchise.—After a franchise, as provided for in § 4836, C. L. of 1915, has been granted by a township board, it shall be submitted to a vote of the electors at the next regular election. The township clerk, at least twenty days before the next regular election, shall give notice that the question of the confirmation of the granting of such franchise will be submitted to a vote of the electors by posting a written or printed notice in three or more public places in such township. See Secs. 59, 60 and 61 of this Guide.

1254. Clerk to Prepare Franchise Ballots.—Printed ballots shall be prepared by the township clerk and kept at the polling place for the use of the electors and shall be in substantially the following form:

Confirming grant of franchise to .....
for the purpose of ..... [ ] Yes.

Confirming grant of franchise to .....
for the purpose of ..... [ ] No.

§ 4828.

1255. To Record Commissioner's Determination.—Within five days after the final determination upon any application for laying out, altering or discontinuing any highway, the commissioner shall file a full record and return of his doings in the premises, together with a copy of the

application and notice, proof of service, plat or map with the minutes of survey and the award of damages, all of which shall be recorded by the township clerk. See Sec. 1458 of this Guide.

1256. Duty of Clerk on Appeal from Determination of Commissioner.—Every such appeal shall be in writing, signed by the appellant, and addressed to the township board, and filed with the township clerk, who shall, as soon as may be after the time limited for taking appeals shall have expired, call a meeting of the township board to consider such appeal. Such clerk shall, at least ten days before the time appointed for such meeting, cause notice in writing of the time and place of such meeting to be served upon the appellant and the commissioner, or left at their respective places of residence. See Sec. 1459 of this Guide. [See Forms Nos. 79 and 80.]

1257. To File Record of Decision Upon Appeal.—Such decision shall be reduced to writing, and signed by the board making the same, and filed in the office of the township clerk, and, together with all other papers relating to such appeal, shall be recorded as part of the record of the road. [See Form No. 89.] See Sec. 1460 of this Guide.

1258. Duty of Clerk on Appeal in Case of Line Road.—The provisions of this chapter relating to appeals shall apply to the laying out and altering of line roads between townships by joint action. Notice of such appeal may be served on the township clerk of either township, and the officer receiving such notice of appeal shall, as soon as may be, appoint a time and place of hearing upon such appeal, and shall notify the appellant and the officers whose action is appealed from, of the time and place of such hearing, in the same manner that the township clerk is required to notify appeals from the determination of a commissioner of highways, and such appeal shall be considered by the township boards, jointly, and the same proceedings shall be had thereon, and the record thereof shall be made in the same manner as is provided for in laying out line roads pursuant to Sec. 1462 of this Guide. § 4301. [See Forms Nos. 79 and 80.]

"This chapter," above referred to, is Chapter I of the General Highway Law. See Sections 1465 to 1497 of this Guide.

1259. Duty of Clerk Relating to Order for Damages.—When any damages may be awarded under the provisions of this chapter in consequence of laying out or altering any highway, before such highway shall be opened, the amount of such damages shall be paid or tendered to the person or persons entitled thereto, or an order on the treasurer of the proper township, for the amount of such damages, shall be delivered or tendered to such person or persons, and if the owner of any lands upon which any damages may be awarded be unknown, and such lands be not occupied, an order for the amount thereof shall be drawn upon the township treasurer and deposited with the township clerk, payable to the owner of the description of land upon which such damages were awarded, describing such lands by their legal subdivision in such order, which order shall be held by the township clerk to be delivered to the owner of such lands when called for or otherwise lawfully demanded. § 4311.

"This chapter," above referred to, is Chapter I of the General Highway Law. See Sections 1465 to 1497 of this Guide.

1260. To Transmit Record Relating to Highway Taxes to Supervisor.—A certified copy of the record of the proceedings of the township meeting or township board, fixing and determining the amount of highway taxes, shall be transmitted by the township clerk to the supervisor of his township on or before the first day of October in each year. § 4323.

1261. Clerk to Countersign Highway Orders.—All disbursements from the highway improvement fund or the road repair fund shall be made upon the warrant of the commissioner, drawn on the township treasurer and countersigned by the township clerk. § 4328.

1262. To Countersign Orders in Payment of Contracts.—Upon the performance of the work by the contractor, if the expenditure is of an amount greater than five hundred dollars, for the repairing or construction of roads or bridges, as provided in § 4473, C. L. of 1915, there shall be drawn and signed by the commissioner, and countersigned by the township clerk, orders upon the township treasurer for the amount of said contract. See Sec. 1441 of this Guide.

1263. Unlawful for Clerk to be Interested in Contract.—It shall be unlawful for any township officer to be in any way interested directly or indirectly in any such contract. Any contract in which any such township officer is so interested shall be absolutely void. § 4473. See Sec. 1441 of this Guide.

1264. When Plans, Specifications and Bids to be Filed with Clerk.—In case the township board shall decide to do the work of repairing or constructing roads or bridges when the proposed expenditure is greater than five hundred dollars, by day labor, the plans and specifications together with all bids received thereon, and the reasons in writing, for not letting the job by contract, shall be filed in the office of the township clerk. § 4473. See Sec. 1441 of this Guide.

1265. To Countersign Orders for Payments for Labor or Material.—Upon the performance of any contracts for labor, or for the furnishing of materials according to the provisions of this act (the General Highway Law) the commissioner of highways shall make payment therefor by order upon the township treasurer, which orders shall be signed by such commissioner and countersigned by the township clerk. § 4474. See Sec. 1441 of this Guide.

1266. Clerk Not to Countersign Orders in Excess of Funds.—The commissioner shall not draw, nor shall any clerk countersign, any order (for the purposes mentioned in the preceding section) in excess of the funds at the time belonging in the treasury, applicable to the payment of the same, or that may have been voted for the purpose. § 4474.

1267. Clerk to Call Meeting of Board to Consider Additional Expenditure for Roads and Bridges.—When the expenditure of a greater sum than one thousand dollars is deemed necessary the commissioner shall notify the township clerk thereof in writing, and the clerk shall, within five days thereafter, call a meeting of the township board to consider the matter of said notice. See Sec. 1614 of this Guide.

1268. Clerk to File Bonds of Commissioner and Overseers.—The bond of the commissioner may be approved by, and the bonds of the commissioner and overseers shall be filed with, the township clerk, who shall safely keep the same in his office. See Sec. 1436 of this Guide.

1269. Clerk to Give Notice to Person Appointed Overseer.—The commissioner making such appointment or designation shall cause such warrant to be filed in the office of the township clerk, who shall forthwith give notice thereof to the person so appointed or designated, who shall give written notice of his acceptance to such clerk within ten days after receiving such notice. § 4472. [See Form No. 81.]

1270. To be Clerk of the Commissioner of Highways.—The township clerk shall be the clerk of the commissioner of highways, and shall, under his direction, record his proceedings in a suitable book to be provided by the clerk for that purpose at the expense of the township, and shall keep an accurate account of all orders drawn by the commissioner on the township treasurer, stating the amount of each, and in whose favor the same were drawn; and all books and papers relating to the business of the commissioner shall be preserved and kept by the clerk in his office, and he shall record, in a book to be kept by him for that purpose, all papers filed in his office relating to laying out, altering, or discontinuing of roads. § 4477.

1271. Clerk to Indorse Date of Presentation on Unpaid Highway Orders.—Whenever any order for the payment of money lawfully drawn by the highway commissioner of any township within the State upon the treasurer of such township shall have been duly presented to such township treasurer for payment, and payment thereof shall not be made within six months from such presentation, by reason of lack of funds for the lawful payment of such order, the treasurer shall, at the request of the holder of the order, make a statement in writing of such facts and deliver the same to the holder, and the holder may present the order with such statement to the township clerk of the township, and the clerk shall thereupon make a minute of the number, date and amount of the order, and the date of its first presentation to the treasurer, and shall make an indorsement on the order, showing the presentation to him. § 4556.

1272. Clerk to Make Statement of Unpaid Orders to Supervisor.—The township clerk of each township shall include in the statement annually required to be made by him to the supervisor, of moneys proposed to be raised in said township by taxation, a statement of the amounts of all such orders before then minuted by him, with a further statement of the amount due and to become due as interest on such orders up to the first day of January succeeding such statement. § 4557.

A township board cannot, by the retirement of orders drawn on the highway fund of a road district, and the issuance in their stead of a township order, make the indebtedness a charge against the township.—Lumber Co. v. Township of Springfield, 92 / 277; McFarlan v. Township of Cedar Creek, 93 / 558.

CHAPTER V.

DUTIES OF TOWNSHIP CLERK UNDER DRAIN LAWS.

1273. To Deliver Certified Statement of Drain Taxes to Supervisor.—The township clerk shall, on or before the first day of October of each year, make and deliver to the supervisor of his township a certified statement of the several amounts of drain taxes to be assessed upon such township at large, for the ensuing year, and shall specify therein the several amounts to be raised for each particular drain, and also a certified state-

ment of all the descriptions of land assessed for benefits for each drain, and the amount to be assessed upon each description for such years as determined by the county drain commissioner in his special assessment rolls. § 4917. [See form No. 82.]

1274. **Assessments for Drains Traversing More Than One County.**—Each county drain commissioner shall furnish the several assessments to the clerks of the townships within his own county, in which the lands affected thereby may be situated, and such assessments shall be computed, divided, spread, collected and returned in the same manner, in every respect, as provided in the case of other drains constructed under this act. Such assessments shall be subject to the same right of appeal and under the same conditions as hereinbefore provided. § 4936.

As to right of appeal, etc., see § 4935, C. L. of 1915. "This act," above referred to, is Act 254 of 1897, being § § 4870 to 4965, C. L. of 1915.

1275. **Clerk to Call Meeting of Board in Drain Matters.**—Upon notice from the county drain commissioner that application has been made for the locating, establishing, widening, deepening or extending of any drain, the township clerk or clerks of the township or townships through which the proposed drain passes, shall call a meeting or joint meeting of the township board or boards, at some place to be designated by the county drain commissioner, giving notice of the time and place of such meeting and causing a notice thereof to be published for not less than one week in a newspaper published and in general circulation in the county. § 4881. See Sec. 777 of this Guide.

The like duty devolves upon the township clerk in case of application for cleaning out a drain. § 4940. See Section 778 of this Guide.

CHAPTER VI.

OF LOST GOODS AND STRAY BEASTS.

1276. **Clerk to Make Entry of Finding of Lost Goods.**—When any person shall find any lost money, or lost goods, if the owner thereof be known, he shall immediately give notice thereof to such owner; if the owner thereof be unknown, and such money or goods be of the value of three dollars or more, the finder shall, within two days, cause notice thereof to be posted in two public places within the township where the same were found; and shall also, within seven days, give notice thereof, in writing, to the township clerk of such township, and pay him twenty-five cents for making an entry thereof in a book to be kept for that purpose. § 7445.

1277. **Duty of Clerk on Receiving Notice of Finding Stray Beasts.**—It shall be lawful for any resident freeholder of any township in this State to take up any stray horses, mules or asses, by him found going at large in such township, beyond the range where such horses, mules or asses usually run at large; and also to take up, between the months of November and March, any stray neat cattle, sheep or swine by him found going at large therein, beyond the range where such animals have usually run at large. Such finder shall immediately give notice thereof to the owner of any such animal, if known to him; but if the owner thereof be unknown, such finder shall, within ten days, cause notice thereof to be entered with the township clerk, in such book as aforesaid, containing a description of the color, age, and natural and artificial marks of such ani-

mals, as near as may be, together with the name and residence of such finder, and shall pay to said township clerk the sum of fifty cents for entering the same and sending notice as hereinafter required; and the township clerk shall, immediately upon receipt of such notice, make and send to the county clerk a copy of the same, who shall, immediately upon receipt thereof, enter the same in a book to be kept by him for that purpose, and the finder shall pay to the township clerk the further sum of twenty-five cents, which sum shall be sent with the notice as aforesaid to the county clerk, and the same shall be the amount of fees said county clerk shall be entitled to receive for his services. § § 7447-48.

1278. To Charge Treasurer with Moneys Received on Sale of Estrays. —Constables are required to serve the township clerk with notice of the sale of all estrays and the clerk shall charge the treasurer with the moneys received therefor. See Sec. 2118 of this Guide.

CHAPTER VII.

CHATTEL MORTGAGES AND LIENS ON GRAIN.

1279. Filing of Chattel Mortgages.—Every mortgage or conveyance intended to operate as a mortgage, of goods and chattels, which shall hereafter be made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed in the office of the township clerk of the township, or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the goods or chattels are located, and also where the mortgagor resides, except when the mortgagor is a non-resident of the State, when the mortgage, or a true copy thereof, shall be filed in the office of the township clerk of the township or city clerk of the city, or city recorder of cities having no officer known as city clerk, where the property is. And unless the mortgagor named in such mortgage or conveyance intended to operate as a mortgage, or some person for him, having knowledge of the facts, shall, before the filing of the same, make and annex thereto an affidavit setting forth that the consideration of said instrument was actual and adequate, and that the same was given in good faith for the purposes in such instrument set forth, no officer shall receive such instrument or file the same in his office until such affidavit is made and annexed thereto. Every person who shall knowingly make any false statement in any such affidavit, upon conviction thereof shall be deemed guilty of the crime of perjury: Provided, That in the case of corporations engaged in transporting passengers or freight, or conveying electricity or gas or telephonic or telegraphic communications, all that is, or shall be required is the filing of a copy of such mortgage with the register of deeds of each county through which the lines or property thereof pass, and such mortgages shall not require any affidavit of renewal: Provided further, That when such mortgage or other conveyance intended to operate as a mortgage is given upon a stock of merchandise or merchandise and fixtures or any part thereof purchased for re-sale at retail, then such instrument or a

true copy thereof, and of the affidavit thereto attached, shall also be filed in the office of the register of deeds of the county where the goods and chattels are located. § 11988.

1280. Duty of Clerk on Filing of Chattel Mortgages.—It shall be the duty of the township clerk, upon the presentation of any such instrument or copy for that purpose, and the payment of his fees, to indorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested. Such township clerk shall also enter in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of the mortgagors alphabetically, and shall note therein the time of filing each instrument or copy. § § 11989-90.

When filed, a chattel mortgage is a public record, and belongs to the clerk's office, and he has no authority to allow it to be removed therefrom.—Woodruff v. Phillips, 10 / 500. But, if taken from the clerk's office, it need not be refiled when returned in order to continue it in force.—Id.

It is no part of the duty, and it is not in the power, of a township clerk, to find out whether a paper left with him for filing is genuine, if purporting to be an original, or whether it is in fact an original, and not a copy, and the statute making such filing notice of the paper, such as it is, does not make either the file, or a copy of the file, proof of execution or genuineness.—Shelden v. Merrill, 69 / 156.

The section providing for the filing of chattel mortgages applies only to mortgages of goods and chattels which are capable of delivery, and not to an assignment of open accounts. —Preston National Bank v. Purifier Co., 84 / 364.

Under the statute which requires chattel mortgages executed by non-residents of this State to be filed in the office of the clerk of the township "where the property is," such filing must be in the township where the property is situated at the time of the execution of the mortgage. —First National Bank v. Weed, 89 / 357.

1281. Clerk to Indorse Time of Renewal of Mortgage.—On receiving affidavit of the renewal of a chattel mortgage, the township clerk shall indorse upon said affidavit the time when the same was filed. See § 11991, C. L. of 1915.

1282.—Duty of Clerk on Discharge of Mortgages.—Any chattel mortgage, or any instrument intended to operate as a chattel mortgage, that has been or may hereafter be filed, may be discharged by an entry on the book, kept by the township clerk, as provided in Sec. 1280, where the time of filing such instrument has been entered, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the township clerk or his deputy, who shall subscribe the same as a witness thereto; and such entry shall have the same effect as a deed or instrument of release, duly acknowledged and filed, and whereupon said chattel mortgage, or the copy thereof which may have been filed, shall at the request of the mortgagor, be delivered to him by such clerk, or his deputy, and such clerk shall make an entry of the date of such delivery, and to whom delivered. § 11996.

1283. Fees of Clerk for Filing Instruments, Etc.—The township clerk shall be entitled to receive the following fees for services under the foregoing provisions: For filing each instrument, copy, or affidavit, six cents; for entering the same in a book, six cents for each party to such instrument; for searching for each paper, six cents, and the like fees for certified copies of such instruments, copies, or affidavits as are allowed by law for copies of records kept by registers of deeds (seven cents for each folio). § 11994.

1284. Lien Upon Grain, Etc., for Pressing, Threshing or Hulling.—Any person or persons entitled to a lien under the act establishing a lien upon hay, grain, seed and other products for pressing, threshing or hull-

ing, shall, within twenty days after the pressing, threshing or hulling is completed, file in the office of the township clerk of the township in which the hay, grain or seed was grown, or pressing, threshing or hulling was done, a statement in writing, verified by oath, stating the name of the person claiming the lien, the amount, quantity and kind of hay or grain, seed or other products pressed, threshed or hulled, the amount due claimant for said services as near as may be, over and above all legal set-offs, the name of the person for whom the pressing, threshing or hulling was done, and a description of the land upon which the hay, grain, seed, or other products were grown or pressing, threshing or hulling done; such description shall be deemed sufficient if it properly identifies the premises by the name of the owner or occupant, or other description which accurately and clearly identifies the location of the property upon which such lien is claimed: Provided, That such lien shall be deemed to have been waived by the person entitled thereto, unless such statement shall be filed within the period of twenty days as aforesaid. § 14873.

1285. Fee of Clerk for Filing.—It shall be the duty of the township clerk, upon presentation of such statement and notice of lien, to file the same in his office in the same manner as provided by law for the filing and recording of chattel mortgages; and he shall be entitled to charge and receive from the person filing such statement and notice a fee of twenty-five cents and no more. § 14874.

CHAPTER VIII.

*SPECIAL DUTIES OF TOWNSHIP CLERK UNDER SCHOOL LAWS.

1286. District Board to Report District Taxes to Town Clerk.—The district board or board of education, shall, between the second Monday in July and the first Monday in August in each year, make out and deliver to the township clerk of each township in which any part of the district is situated, a report in writing under their hands of all taxes voted by the district during the preceding year, and of all taxes which said board is authorized to impose, to be levied on the taxable property of the district. § 5677. [See Form No. 83.]

1287. Township Clerk May Administer Certain Oath.—The affidavit of the person taking the school census may be made before the township clerk. See § 5689.

1288. School Census List to be Returned to Township Clerk.—The census list shall be returned to the clerk before the first Monday in August. See § 5689.

In fractional districts the number of school children in the part of the district lying in each township respectively shall be reported to the clerk thereof. See § 5692.

1289. Report of Director to be Delivered to Township Clerk.—The annual report of the director shall be delivered to the township clerk and filed in his office, previous to the first Monday in August. See § 5691.

In fractional districts such report shall be made to the clerk of the township in which the schoolhouse is situated. See § 5692.

*For other duties of township clerk relating to schools and school districts, see Sections 918 to 1000 of this Guide.

1290. Town Clerk to Report School Taxes to Supervisors and Directors.—It is the duty of the township clerk of each township, on or before the first day of October in each year, to make and deliver to the supervisor of his township a certified copy of all statements on file in his office of moneys proposed to be raised by taxation in each of the several school districts of the township, if any, for school purposes, or to be raised by any township district, whole or fractional, for such purposes. In case such condition shall arise, he shall certify to the supervisor the amount to be assessed upon the taxable property of any school district retaining the district schoolhouse or other property on the division of the district as the same shall have been determined by proper authority, and also certify the same to the director or secretary of such district and to the director or secretary of the district entitled thereto. § 5696. [See Form No. 84.]

COMPELLING REPORT: Mandamus lies on relation of a school district assessor to compel the clerk of a township, to which the district formerly belonged, to certify to the supervisor of the township to which it now belongs, the amount ascertained by the school inspectors as due to the relator's district from what remained of the old district out of which it was erected.—Ramsey v. Everett Town Clerk, 52 / 344.

1291. Taxes for Tuition of Eighth Grade Pupils to be Reported to Clerk.—The tax provided for the payment of tuition of eighth grade pupils shall be reported to the clerk of the township in which such district is located and shall be spread upon the tax roll of such township in the same manner and at the same time as other school taxes. § 5831.

1292. Town Clerk to be Notified of Apportionment of School Moneys.—The county treasurer shall give notice to the clerk of the amount of all school moneys apportioned to his township. See § 5711.

1293. Town Clerk to be Furnished with Statement of School Census.—The superintendent of public instruction shall annually, and previous to July 15, transmit to the clerk of each county a statement of the townships, districts and township districts, in his county, that are entitled to receive library moneys, giving the number of children in each case between the ages of five and twenty years as shall appear from the annual reports of such townships, districts and township districts, for the school year last ending. Said clerk shall file such statement in his office and shall forthwith furnish a copy thereof to the county treasurer. The state superintendent shall also furnish a copy of such statements to the township clerks in each county. § 5749.

1294. Town Clerk to Apportion School Moneys to Districts.—On receiving notice from the county treasurer of the amount of school moneys apportioned to his township, the township clerk shall apportion the same amount to the several districts therein, or to the whole or fractional township district entitled to the same, in accordance with the statement from the superintendent of public instruction sent to such township clerk and based upon the annual report of the school directors or the secretary of the board of education for the preceding school year, and he shall file said statement from the superintendent of public instruction permanently in the records of his office (§ 5697). Said clerk shall also apportion to the school districts in his township, as required by law, on receiving notice of the amount from the township treasurer, all moneys raised by township tax, or received from other sources, for the support of schools; and in all cases make out and deliver to the township treasurer a written

statement of the number of children in each district drawing money, and the amount apportioned to each district, and record the apportionment in his office; and whenever an apportionment of the primary school interest fund, or moneys raised by tax, or received from other sources, is made, he shall give notice of the amount to be received by each district to the director thereof. § 5698. [See Forms Nos. 85 and 86.]

1295. Clerk to Apportion One-Mill Tax to School Districts.—The supervisor shall assess upon the taxable property of his township one mill upon each dollar of the valuation thereof in each year, and report the aggregate valuation of each district to the township clerk, who shall report said amount to the director of each school district in his township, or to the director of any fractional school district, a portion of which may be located in said township, before the first day of September of each year. All moneys raised by one-mill tax shall be apportioned by the township clerk to the district in which it was raised, and all moneys collected by virtue of this act (§ § 5641-5761, C. L. of 1915) during the year, on any property not included in any organized district, or in districts which have not maintained school for the required period during the previous year, shall be apportioned to the several other school districts of said township that did maintain school in the same manner as the primary school interest fund is now apportioned. All moneys accruing from the one-mill tax upon the property of any district in any township before said district shall have a legal school therein, shall belong to the district in which it was raised when such district shall have maintained school for the required period by a qualified teacher. § 5700. [See Form No. 86.]

1296. Clerk to Certify to Supervisor Taxes in Fractional Districts.—The district board is required to certify to each township clerk the taxes to be levied, and such clerk shall certify the same to the supervisor. [See Form No. 84.] See Sec. 1150 of this Guide.

1297. Liability for Not Reporting Taxes, Etc.—Any township clerk who shall neglect or refuse to certify to the supervisor any school district taxes that have been reported to him as required by this act (Chap. 116, C. L. of 1897), and any supervisor wilfully neglecting to assess such tax shall be liable to any district for any damage occasioned thereby, to be recovered by the treasurer in the name of the district, in an action of debt, or on the case. § 5758.

1298. To Certify Tax for Free Text-books, Etc.—The clerk must certify to the supervisor a statement of the amount voted by any district board, under the provisions of the act providing uniform and free school text-books. See § 5784. [See Form No. 87.]

1299. Duties of Clerk in U. P. Township School Districts.—The provisions of law relating to township school districts in the Upper Peninsula are compiled in Chapter III of Part X, being Secs. 985 to 1000 of this Guide.

1300. To Receive List of Qualified Teachers.—The county commissioner of schools shall furnish, previous to the third Monday in July in each year, to the township clerk of each township in the county, a list of all persons legally authorized to teach in the county at large, during the preceding school year, and in such township, with the date and term

of each certificate, and if any have been suspended or revoked, the date of such suspension or revocation. § 5884.

1301. **Clerk Ex Officio Member of Board of Trustees.**—The township clerk shall be ex officio member and the clerk of the board of trustees in townships establishing rural high schools and the township treasurer shall be ex officio member and treasurer of the board with the same power as other members of the board. § 5936.

CHAPTER IX.

DUTIES OF TOWNSHIP CLERK RELATING TO STATISTICS.

1302. **Township Clerk to Issue Burial Permit.**—The body of no person, whose death occurs in the State, shall be interred, deposited in a vault or tomb or otherwise disposed of, or removed from the township in which the death occurred, until a permit for burial or removal shall have been properly issued by the clerk of the township, in which the death occurs, who shall be the registrar of deaths. § 5604.

1303. **Death Certificate to be Filed With Clerk.**—Whenever any person shall die, the undertaker, householder, relative, friend, manager of institution, sexton or other person superintending the burial of said deceased person, shall cause a certificate of death to be filled out with all of the personal and family particulars required in the following section, and attested by the signature of a relative or some competent person acquainted with the facts. The physician who attended the deceased person during his last illness shall fill out the medical certificate of cause of death, which death certificate shall be delivered to the registrar within the time designated, if any, by the local board of health. In case of death without the attendance of a physician, or, if it shall appear probable that the deceased person came to his death by unlawful or suspicious means, then the registrar shall refer the certificate to the health officer or coróner for immediate investigation and report prior to issuing the permit. But when the health officer is not a physician, and only in such case, the registrar is authorized to insert the facts relating to the cause of death from statements of relatives or other competent testimony. Upon the presentation of a certificate of death properly filled out and signed, the registrar shall issue a permit for the burial or removal of the body and shall immediately record the death in the register of deaths, numbering all certificates consecutively in the order in which they are received, beginning with number one for the first death that occurs in each year. In deaths from dangerous communicable diseases, burial or removal permits shall be granted by the registrar only in accordance with the rules of the local board of health and of the state board of health relating thereto. The sexton or other person having charge of the interment or final disposition of the body shall retain the burial permit when presented to him by the undertaker. When a body is shipped the removal permit shall be presented by the undertaker or other person shipping the same to the agent of the transportation company, and shall be attached by him, with the transit permit, to the box containing the body, to accompany the same to destination, and no transit permit shall be issued or received by any transportation company for the shipment of a body unless accompanied by the registrar's removal permit. § 5605.

1304. Subregistrars to File Certificates With Township Clerk.—The secretary of state shall, in his discretion, grant authority to any licensed embalmer to act as subregistrar of deaths, in which capacity he shall be authorized to issue burial permits to himself for deaths occurring in any township in the State under the same restrictions as those governing registrars. He shall personally file all certificates of death upon which he has issued permits to himself with the registrar of the township in which the deaths occurred on or before the third day of the month following that in which the deaths occurred, and failure to do so or to comply strictly with this act shall warrant the immediate cancellation of his authority as subregistrar by the secretary of state. § 5612.

1305. Contents of Death Certificate.—The certificate of death shall contain the following facts concerning each decedent:

First Part—Personal and family particulars:—Date of death, stating year, month and day; full name; sex; age, in years, months and days, if known, or the approximate age if the exact age cannot be ascertained; color; whether single, married, widowed, or divorced; if married, age at first marriage, and parent of how many children, of whom how many are living; place of death, giving ward, street and number if in a city; birthplace (State or country if not born in Michigan); occupation; full names of both parents; birthplaces of both parents; proposed place and time of burial or place and route for removal of body; signature and address of reporter certifying to above facts; signature and address of undertaker.

Second Part—Medical certificate of cause of death:—Name of disease; immediate cause of death, together with contributory causes or complications, if any; duration of each cause; date last seen by medical attendant, or fact of no medical attendance; in violent deaths, statement whether death resulted from accident, suicide or homicide; whether a post mortem was held and results thereof, signature and address of medical attendant, health officer or coroner certifying to cause of death. Said certificate and permit shall not be required before burial in townships where it is impracticable to obtain the same within a reasonable time after death, but in all such cases, said certificate shall be obtained within ten days after death. § 5606.

1306. Township Clerk to Make Returns to Secretary of State and County Clerk.—Registers of deaths shall be supplied by the secretary of state to registrars for recording certificates of death, together with all blanks required for the execution of this act. On the fourth day of each month the registrar of each township shall promptly transmit to the secretary of state, in an official envelope provided by the State and stamped with one full letter stamp, all the certificates of death filed in his office during the preceding calendar month, with a statement of the number of deaths so reported. If no deaths occurred, he shall make a return to that effect upon a postal card blank. The certificates of death returned to the secretary of state shall be permanently preserved, bound and indexed by him; the statistical data therein contained shall be compiled and published in the annual registration report, and monthly bulletins shall be issued showing the mortality of the State in detail, the prevalence of important causes of death, and such other information as shall be of public interest and sanitary value. The registrar shall also

send a transcript monthly to the clerk of his county containing a record of all the deaths entered upon his register during the preceding calendar month for entry upon the county record of deaths. All certificates of death, local registers or county records authorized under this act or certified copies thereof shall be prima facie evidence in all courts and for all purposes of the facts recorded therein. § 5607.

1307. Fees of Registrars.—Each registrar of deaths shall receive twenty-five cents for the proper record and return of each death to the secretary of state and the proper return of a transcript thereof to the clerk of the county in which his registration district is situated, which fee shall also cover the issuing of a burial or removal permit. The secretary of state shall certify to the clerk of each county annually the number of properly executed certificates of death received by him from each registrar in such county for the preceding calendar year, which certified statements such county clerk shall compare with the transcript of deaths on file in his office, and, if such transcripts shall be found to conform with such certified statements, such county clerk shall deliver such certified statements to the respective registrars entitled thereto, which certified statements shall be received by the treasurer of the county in which such registration districts are situated, and payment shall be made thereon in accordance with the rate fixed in this section: Provided, That the secretary of state shall not include in the number of certificates certified for payment any imperfect certificates, or those not transmitted promptly as required by the preceding section. § 5608.

1308. Fees of Registrars.—Subregistrars shall receive no fees or other compensation for issuing burial or removal permits or transit permits to themselves, or for transmitting certificates of death to the township or village clerks under this act, but the regular registrars shall receive the usual compensation for such certificates when promptly transmitted under the registration law. § 5612.

1309. Penalty for Failure to Perform Duty.—Any official failing or refusing to perform his duty under this act, or any undertaker violating any of its provisions, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five dollars and not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or suffer both fine and imprisonment at the discretion of the court. Local registrars shall see that the provisions of this act are enforced in their jurisdictions; the secretary of state shall be charged with the general execution of the law and shall have supervisory power over the registrars, to the end that this act shall be uniformly and effectually executed throughout the State. Prosecuting attorneys shall, upon the request of a local registrar or of the secretary of state, assist in the enforcement of the provisions of this act. § 5609.

"This act," above referred to, is Act 217 of 1897, being § § 5604-5610, C. L. of 1915.

1310. Certain Townships Exempt.—It is the duty of local boards of health to see that the provisions of this act are enforced. But in sparsely settled townships, having an average density of population of less than five persons per square mile at the time of the last preceding United States or State census, burial permits shall not be required in advance of interment, when impracticable to obtain them; but in all such cases

the certificate of death shall be filed with the registrar at the earliest practicable moment, not to exceed ten days after death, and not later than the fourth day of the following calendar month. § 5610.

"This act," above referred to, is Act 217 of 1897, being § § 5604-5610, C. L. of 1915.

1311. Clerk to Register Births.—All births that occur in the State shall be immediately registered in the districts where they occur, which primary registration districts shall be the same as those provided for the registration of deaths by act number two hundred seventeen of the public acts of eighteen hundred ninety-seven, as amended by acts numbers twenty, and two hundred nine of the public acts of nineteen hundred one, (the same being § § 5604-10, C. L. of 1915). Local registrars for deaths shall also be the local registrars for births, and the secretary of state shall be the state registrar for births, as for deaths. It shall be the duty of the attending physician, or in the absence of an attending physician, of any other person who shall gratuitously or for hire, deliver a woman of child, or attend a woman in childbirth, to file a certificate of birth, properly and completely filled out with all the particulars required by this act, with the local registrar of the district in which the birth occurred, within five days after the date of birth. And if there be no physician or other person as above defined in attendance, then it shall be the duty of the father of the child, householder, manager or superintendent of public or private institution, or other competent person having cognizance of the facts, to file said certificate of birth with the registrar within five days after birth. § 5613.

The certificate shall be written legibly in permanent black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information specified in § 5614, if possible to obtain them, or satisfactorily account for the omission of any of said items. See § 5614.

The blank certificates, giving the items required by this law, are furnished by the secretary of state.

1312. To Examine and Transmit Certificates to Secretary of State.—The local registrar shall supply blanks and instructions, as directed by the secretary of state, to physicians, midwives, and to other persons requiring them. He shall carefully examine each certificate of birth when presented for record to see that it has been made out in accordance with the provisions of this act, and the instructions of the secretary of state, and if any certificate is incomplete or unsatisfactory, he shall immediately notify the informant and require him to supply the missing items if they can be obtained. If it is impossible to obtain any such item, then the local registrar shall fill the blank space with the word "Unknown." When any certificate of birth of a living child is presented without statement of the given or christian name, then the local registrar shall deliver to the informant a special blank for the report of the given or christian name of the child, which shall be filled out with the full name of the child, including given and christian name and surname, as soon as such child shall be named, when said informant shall forthwith deliver the properly filled out blank to the local registrar. The original certificate of birth shall not be considered to be complete until such statement of given or christian name shall be filed or the blank

returned with the statement "Died unnamed." The local registrar shall immediately number each certificate of birth when filed with him, whether complete or incomplete, beginning with "No. 1" for the first birth that occurs in his district in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall make a complete and accurate copy of each certificate registered by him, upon a form identical with the original certificate, to be filed and permanently preserved in his office, as the local record of such birth, in such manner as directed by the secretary of state. And he shall, on or before the fourth day of each month, at the time of making his monthly report of deaths, transmit to the secretary of state all original certificates of births registered by him for the preceding calendar month, together with any delayed certificates for preceding months, corrections of certificates previously transmitted, and supplemental statements of given or christian names of children whose names were not given in full in certificates previously filed. And if no births occurred in any month, he shall, on or before the fourth day of the following month, report that fact to the secretary of state in such manner as he shall direct. § 5615.

1313. When Clerk May Require Deposition and Correct Certificates.—Whenever it may be alleged that the facts are not correctly stated in any certificate of birth theretofore registered, the local registrar shall require a deposition under oath to be made by the person asserting the fact, to be supported by the depositions of two or more credible persons having knowledge of the facts, setting forth the changes necessary to make the record correct. Having received such deposition, he shall file it and shall then draw a line through the incorrect statement or statements in the certificate, without erasing them, and shall make the necessary corrections, noting on the margin of the certificate his authority for so doing, and transmit the deposition, attached to the original certificate, when making his regular monthly returns to the secretary of state. He shall correct his register in the same manner that he corrected the original certificate. If the correction relates to a certificate of birth previously returned to the secretary of state, he shall transmit the deposition forthwith to the secretary of state. If the correction is first made upon the original certificate of birth on file in the office of the secretary of state, then the secretary of state shall immediately transmit a certified copy of the original certificate, corrected as above, to the local registrar, who shall thereupon substitute such certified copy for the copy of the certificate in his records. All such corrections and marginal notes referring to them shall be made in permanent red ink, and no fee shall be charged in connection therewith. § 5617.

1314. Fees of Clerk for Registering Births.—Each local registrar shall be entitled to be paid the sum of twenty-five cents for each birth certificate properly and completely made out and registered with him, and by him returned to the secretary of state on or before the fourth day of the following month, which sum shall include the making of the copy of the certificate to be filed and preserved in his office. Certificates lacking certain items, including the given or christian name of the child, in children not named at the date of filing the report, shall not be considered as defective, provided the missing information is obtained and returned to complete the certificate as elsewhere provided in this act. In case no

births occurred during a calendar month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect promptly made in accordance with the requirements of this act. All amounts payable to any registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon presentation of a proper warrant issued by the secretary of state. The secretary of state shall issue warrants in favor of local registrars at the end of their official years, or for the year ending March thirty-first, when continuing in office, specifying the number of certificates properly registered and promptly returned, and the number of prompt monthly reports made by each to the effect that no births occurred, with the amount due at the rate fixed herein. § 5618.

1315. Town Clerk to Send Transcript of Certificates to County Clerk.—At the end of each quarter, the local registrar shall send a transcript of all births registered by him for the quarter to the clerk of his county, and suitable blanks for this purpose, containing all the items now required by county records, together with stamped envelopes addressed to the county clerk, shall be supplied by the secretary of state. Warrants in payment for returns shall be transmitted to local registrars through the clerks of their several counties, and shall be countersigned by the county clerks to indicate that the corresponding returns have been duly made to them as required above. If returns have not been made, the county clerks shall at once notify the local registrars, requiring them to do so, and if not filed by them within thirty days, shall return the warrants, with full explanations as to the registered numbers not returned, to the secretary of state, who shall notify the local registrars of their return and, unless satisfactory explanations shall be made or the returns filed forthwith, shall cancel the warrants. § 5619.

1316. Clerk to Make Lists of Births for Supervisors.—On or before the tenth day of April in each year, every local registrar shall make out a complete list, on a blank provided by the secretary of state for that purpose, of the births that have occurred in his district during the preceding calendar year, as registered with him, showing names of parents and dates of birth, and shall on or before the tenth day of April, deliver the same to the supervisor of the township or ward where the births occurred or to the assessor or assessors of the city where the births occurred. § 5620.

1317. Misdemeanors.—Any physician or midwife in attendance upon a case of confinement who shall neglect or refuse to file a proper certificate of birth with the local registrar within the time required by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars, or shall be imprisoned not to exceed thirty days, or shall suffer both such fine and imprisonment at the discretion of the court. If there was no physician or midwife in attendance upon any case of confinement, then the father, if he shall refuse or neglect to file a proper certificate of birth with the local registrar within the time required by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be liable to the same penalty as that incurred by the physician or midwife in case of violation of the law, as above. And, in the absence of the father, then the householder upon whose premises the birth

occurred, the superintendent or manager of the public or private institution, shall individually be liable, in the order of their responsibility, and in case of conviction for failure or neglect to comply with the requirements of this act, shall be subject to the penalty imposed upon the physician or midwife in case of similar refusal or neglect. Any registrar who shall neglect or fail to enforce the provisions of this act in his district, or shall neglect or refuse to perform any of the duties imposed upon him by this act or by the instructions and directions of the secretary of state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned not over thirty days, or shall suffer both such fine and imprisonment at the discretion of the court. Any person who shall wilfully alter any certificate of birth, or the copy of any certificate of birth on file in the office of the local registrar, except to correct same in the manner provided in this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned not exceeding sixty days, or shall suffer both such fine and imprisonment at the discretion of the court. And any other person or persons who shall violate any of the provisions of this act, or shall wilfully neglect or refuse to perform any duties imposed upon them by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars, or shall be imprisoned not exceeding thirty days, or shall suffer both such fine and imprisonment at the discretion of the court. § 5623.

"This act," referred to in above section is Act 115 of 1903, being § § 5611-5625, C. L. of 1915.

1318. Clerk Charged with Enforcement of Act.—Local registrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts, under the supervision and direction of the secretary of state. And they shall make an immediate report to the secretary of state of any violations of this law coming to their notice by observation or upon complaint of any person or otherwise. § 5624.

See note under preceding section.

CHAPTER X.

DUTIES OF TOWNSHIP CLERK RELATING TO THE DOG TAX.

1319. Clerk to Collect Dog Tax.—It shall be the duty of each owner of any dog over four months of age, on or before the first day of February of each year, to secure from the clerk of the village or township in which he or she may reside, a metal registration tag showing the name of the township or village and license year and the clerk's registration number thereon, and such tag or device shall be securely fastened to the collar of the dog and constantly worn by such dog. The clerk of the village or township shall keep a registration book for such purpose and enter therein the name of the owner and the number of each tag applied for, together with a description of each dog so licensed. The owner shall pay to the clerk the sum of two dollars for each male dog and each spayed female dog (when a certificate of a veterinary surgeon that such female

dog has been spayed is presented to such clerk), and the sum of five dollars for each unspayed female dog for each tag issued: Provided, however, That in the case of dogs kept solely for breeding purposes, and confined in kennels, the fee shall be one dollar for each male dog and two dollars for each female dog so kept. The money so collected shall be deposited by monthly returns with the township treasurer as a special fund for the payment of damages and expenses caused by dogs to livestock in each township, as hereinafter provided, excepting that no part of such fund shall be paid out for damages done by dogs suffering from rabies, except it has been determined by the state live stock sanitary commission that such live stock is affected with rabies, and the justice of the peace authorized to make the appraisement is no notified. Act 347 of 1917, Sec. 2.

1320. Clerk to Purchase Tags of Livestock Sanitary Commission.—It shall be the duty of the state livestock sanitary commission to purchase in the month of December of each year, and from time to time thereafter as may be necessary, a sufficient number of tags for the State of Michigan, which tags shall be purchased from such commission by the clerk of each township or village within the State as the same may be needed to comply with the provisions of this act. Such tags shall be sold at cost to the said clerks of the said townships and villages. The said clerks shall pay for the tags so purchased out of the license money fund in the same manner as other contingent expenses are paid. The said commission is hereby authorized to extend thirty days' credit to any township or village clerk for tags purchased. Act 347 of 1917, Sec. 3.

1321. Supervisor to Report List of Dogs to Clerk.—It shall be the duty of each supervisor or assessor at the time of making his annual assessments to make a list of the dogs within his assessing district and to make a report thereof direct to the said township or village clerk within thirty days after such assessment has been made. Act 347 of 1917, Sec. 4.

1322. Clerk to Issue Order to Pay for Damage Done by Dogs.—The justice of the peace who, after viewing livestock claimed to have been killed or wounded by any dog or dogs, shall be satisfied that the same were killed or wounded by a dog or dogs, is required to make a certificate in writing, stating the fact, and the amount of damage sustained by the owner and shall deliver the certificate to the township clerk, who shall file the same in his office. Upon receipt of such certificate of damage the said clerk shall issue an order for the amount specified in such certificate, payable to the person entitled to the same. All such claims shall be subject to the auditing rules of the township, and payment thereof shall be made according to the time of filing of such claim with the said clerk. Act 347 of 1917, Secs. 7 and 8. See Secs. 1425 and 1867 of this Guide.

CHAPTER XI.

MISCELLANEOUS DUTIES OF TOWNSHIP CLERK.

1323. Clerk to Read Result of Election.—The votes given by ballot shall be publicly canvassed by the inspectors, at the place where the meeting was held, and the result shall be read by the clerk to the persons there assembled; and such reading shall be sufficient notice to all persons

elected at that election to any office, whose names are on the poll list as voters. § 2090.

1324. Clerk to File Certificate of Result of Election.—The inspectors shall also certify upon such statement, their determination of the persons elected to the respective offices, including as well those elected without ballot, as those elected by ballot; which statement and certificate of determination shall be left with the township clerk, and recorded in his office. § 2093.

CERTIFICATE: The board of supervisors cannot go behind this certificate and determine a contested election of a supervisor.—Robinson v. Suprs., 49 / 321.

1325. Oaths of Office to be Filed with Clerk.—All officers except justices of the peace, required to be elected at township meetings by ballot, shall, before entering upon the duties of their offices, and within ten days after notice of their election, respectively take and subscribe the oath of office prescribed by the sixteenth article of the constitution, before the township clerk or other officer authorized to administer oaths, and file the same with the township clerk, who shall record the same; and such oath shall be administered without reward, and certified by the officer before whom the same was taken, with the date of taking the same. § 2095.

CONSTITUTIONALITY: The article twelve above referred to is of the Constitution of 1835.—See Const. of 1908, XVI, 2.
CITED: Paw Paw v. Eggleston, 25 / 38.

1326. Clerk to Notify Persons of Their Election.—Within two days after the election of any officers at a township meeting, the clerk shall transmit to each person elected to any township office, and whose name shall not have been entered on the poll list at such election as a voter, a notice of his election; and each overseer of highways and poundmaster elected at such meeting shall, within ten days after notice of his election, file with the said clerk a notice in writing of his acceptance, and in default thereof he shall be deemed to have refused to serve. § 2096. [See Form No. 88.]

1327. Resignations Delivered to and Filed by Clerk.—Resignations of all officers elected at township meetings shall be in writing, signed by the officer resigning, and addressed to the township board, and shall be delivered to and filed by the township clerk; and, when a justice of the peace resigns, such clerk shall immediately transmit a copy of such resignation, certified by him, to the county clerk. § 2105.

1328. To Notify School Trustees-Elect in U. P.—In townships in the Upper Peninsula, having the single township school district system, the clerk shall notify the trustees elected at the annual meeting of their election within five days thereafter. See Sec. 989 of this Guide.

1329. Clerk to Provide and Keep Ballot Boxes.—There shall be provided and kept by the township clerk, for each election precinct in a township, at the expense of the township, a sufficient number of suitable ballot boxes, with lock and key, each of which ballot boxes shall have an opening through the lid of the proper size to admit a single closed ballot, through which opening each ballot received shall be passed into the box. Act 203 of 1917, Chap. VII, Sec. 13.

1330. Clerk to Furnish Election Seal.—The township clerk shall also, at the expense of the township, furnish an election seal or sealing device

for each election precinct in his township, which seal shall contain the number, if any, of the precinct, the name of the township, and the words "election seal." Act 203 of 1917, Chap. VII, Sec. 14.

1331. Duties of Clerk in Case of Contested Election.—The provisions of law prescribing the procedure in cases of contested election and defining the duties of the township clerk are compiled in Secs. 540 to 554 of this Guide.

1332. Clerk to File Accounts Audited by Township Board.—All accounts audited by such board shall be filed and preserved by the clerk, for the inspection of any of the inhabitants of the township, or of any persons liable to pay taxes therein, and shall be produced at the next annual township meeting and there read by him, if the same shall be required by the meeting. § 2127.

1333. Classification of Justices.—In new townships, or where more than one vacancy is to be filled, the supervisor and clerk shall prepare papers to be drawn by the justices elected to determine their respective terms. See Secs. 27, 28, 29 and 1805 of this Guide.

1334. Books and Papers of Certain Justices to be Delivered to Clerk.—Whenever any justice is removed from office, or removes out of the township or city in which he was elected, or his office in any way becomes vacant, except by death, if his successor in office be not elected and qualified, such justice, or the person in whose possession the same may be, shall, within ten days after such vacancy shall happen, deliver to the township or city clerk all the books and papers in his custody relating to his office as a justice of the peace; and whenever such vacancy shall happen by the division or any alteration of the boundary of a township or city, said books and papers shall be delivered to the clerk of the township or city in which is the last place of residence, prior to such vacancy, of such justice. § 14455.

1335. When Clerk May Demand and Receive Books, Etc.—In case any justice dies, and any books or papers belonging to such justice in his official capacity, come to the hands of any person, the township or city clerk may demand and receive such books and papers from the person having the same in his possession; and it is the duty of every such person, within ten days after any such books or papers come to his possession, whether demanded or not, to deliver the same to the township or city clerk. § 14456.

1336. Clerk to Deliver Books, Etc., to Other Justice.—Whenever any township or city clerk receives the books and papers of any justice of the peace, as hereinbefore provided, he shall within ten days from the time he receives the same, deliver them over to some other justice of the same township or city, who shall deliver the same over to the justice elected to fill said vacancy, within ten days after the election and qualification of said justice. § 14457.

1337. Notice of Levy on Unharvested Crops to be Filed with Clerk.—When a levy is made upon grain while growing, or on any unharvested crops, by virtue of any execution, the officer making such levy shall file a notice of said levy in the office of the township clerk of the township, where such grain or crops are at the time of making such levy; and such

clerk shall file said notice in his office, in the same manner as he is required by law to file a chattel mortgage. § 12870.

1338. Clerk to Assist in Making List of Jurors.—The township clerk acts with the supervisor in making out lists of persons to serve as grand and petit jurors, etc. See Secs. 1161 to 1165 of this Guide.

1339. To Examine Accounts for the Support of the Poor, Etc.—In those counties where the respective townships are made liable for the support of their poor, it shall be the duty of the township clerk to examine, at the annual township meetings, the accounts for the support of the poor therein the preceding year, as the same shall have been allowed and passed by the township board, which accounts shall be openly and distinctly read by the clerk of the meeting. See Sec. 1199 of this Guide.

1340. May Record Deeds of Pews; Fees for Recording, Etc.—Deeds of pews or slips in any church may be recorded by the clerk of the township in which such church is situated, and such clerks shall receive the same fees as the register of deeds is entitled to for similar services (eleven cents for each folio). § 11722.

1341. May Certify to Nomination of Guardian.—Where certain minor resides more than ten miles from the place of holding the probate court, his nomination of a guardian may be certified to by the township clerk, which shall have the same effect as if made in the presence of the judge. See § 13984.

1342. May Administer Oaths in Certain Cases.—The township clerk is authorized to administer the oaths required under the act to promote public health. See § 5283. The oath of the presiding officer or inspector of a primary election or caucus may be administered by the township clerk. See § 15180.

1343. Bounty for Killing English Sparrows.—Every person being an inhabitant of this State, who shall kill an English sparrow in any organized township in this State, during the months of December, January and February of each year, shall be entitled to receive a bounty of two cents for each sparrow thus killed, to be allowed and paid in the manner hereinafter provided. Every person applying for such bounty shall take such sparrows, in lots of not less than ten, to the clerk of the township, within which such sparrows shall have been killed, in a state of good preservation, and if satisfied with the correctness of such claim, shall issue a certificate stating the amount of bounty to which such applicant is entitled and deliver the same to said applicant, and shall destroy such sparrows by burning. Such certificate may be presented by the claimant or his agent to the county clerk of the county in which such sparrows have been killed, who shall thereupon draw a warrant for the amount on the treasurer of said county, and said treasurer shall, upon presentation of said warrant, pay the same from the general or contingent fund of said county. § § 7260-62.

1344. Supervisor to Notify Clerk of Issuance of License to Cut Timber.—When any owner of a private forest reservation shall desire to cut and harvest trees in said reservation, he shall notify the tax assessor of his district of his said intention, whereupon the said assessor shall, before the cutting thereof, estimate the cash value of the timber on the stump so to be cut and harvested, and shall issue a license to cut and remove said timber. The assessor shall notify the clerk and the tax

collector of the issuance of such license. § 764. See Sec. 1098 of this Guide.

1345. Clerk's Duties in Township School Districts.—The provisions of law prescribing the duties of the township clerk in a township organized as a single school district are compiled in Chapter II of Part X. See Secs. 961 to 984 of this Guide.

1346. Clerk to Furnish Register for Women Electors.—It is the duty of the township clerk to procure and furnish to the various boards of registration a separate register in which shall be written the names of all women entitled to registration. See Secs. 579 and 580 of this Guide. See also Sec. 329.

1347. Clerk to Determine Sufficiency of Petition for Health District.—The petition for the formation by two or more contiguous townships of a health district shall be filed with the township clerk and shall be presented to the township board at its next meeting, provided the petition shall be found by the clerk to be signed by the requisite number of qualified electors. See Sec. 910 of this Guide.

1348. Clerk to Notify Member of District Board of Health of His Election.—The person appointed as member of a district board of health shall be notified of such fact by the township clerk. See Sec. 912 of this Guide.

1349. Clerk to Place Health District Estimates Before Town Board.—The estimates prepared by the district health board are required to be filed with the township clerk whose duty it is to place said estimates before the township board at its regular October session. See Sec. 914 of this Guide.

PART XIV.

THE TOWNSHIP TREASURER.

CHAPTER I.—General Powers and Duties.
CHAPTER II.—Collection of Taxes, Etc.
CHAPTER III.—Duties Under Drain Laws.
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CHAPTER I.

GENERAL PROVISIONS OF LAW RELATING TO THE TOWNSHIP TREASURER.

1350. Election of Treasurer, Oath and Term of Office, Etc.—The provisions of law relating to the election of township treasurer and his oath and term of office have been compiled in Parts II and III.

1351. Deputy Township Treasurer.—Any township treasurer with the consent of his bondsmen, which consent shall be in writing and shall be filed with the clerk of the township, may appoint a deputy, who shall possess all the powers and may perform all the duties of the treasurer. Such township treasurer and his bondsmen shall be liable for all the acts and defaults of such deputy treasurer. Such deputy shall be paid by the treasurer. § 4110.

Where the treasurer resides within the township, the appointment of a deputy is not void, though the latter does not reside in the township.—Aud. Gen. v. Longyear, 110 / 223.

1352. Deputy Has Same Authority as Principal Under Tax Law.—When an officer is authorized by the General Tax Law to do any act his deputy shall have the same authority, and such officer shall be responsible for the acts of his deputy. § 4108.

1353. Certain Duties of Treasurer Defined.—The township treasurer shall receive and take charge of all moneys belonging to the township, or which are by law required to be paid into the township treasury, including all moneys that may accrue to his township on account of non-resident highway taxes, and shall pay over and account for the same, according to the order of such township, or the officers thereof, duly authorized in that behalf; and shall perform all such other duties as shall be required of him by law. § 2133.

The treasurer is liable for the public moneys coming into his possession by virtue of his office, although lost without his fault. A statute providing for raising money by tax to reimburse a township treasurer for a sum paid by him to the township to make good an amount of the public money of which he had been robbed, held unconstitutional and void.—Bristol v. Johnson, 34 / 123.

If the treasurer, as collector, receives worthless orders in payment of taxes, and receipts and returns them as paid, he must account for the amount of taxes in money, and if there is loss on the orders, he must bear it.—Staley v. Columbus, 36 / 38. If without authority of law he receives anything in lieu of money, he must account for it as money.—Id.

Whenever any township treasurer misappropriates his trust funds to his private purposes, and fraudulently refuses to account for them, he comes as plainly within the law as if he made a similar misuse of specific coins or bills which he had no right to exchange for their equivalents. Of course there may be losses and failures to pay or even to account, where the

failure is due to misfortune or other cause not criminal. But where the design is criminal, the misuse of a fund belonging to the public, though changing its form constantly, is just as clearly an embezzlement of the property of the public as if any specific chattel had been misapplied.—People v. Bringard, 39 / 25.

Township orders received in the township treasury as money are equivalent to money, and must be accounted for in the same way.—Byles v. Golden Township, 52 / 612.

Moneys raised by tax upon a township for a work of internal improvement, and to be applied thereto by a State board, are not township moneys, even though the township treasurer is the officer designated by law to collect them; and the treasurer and not the township is liable for them if collected.—Anderson v. Hill, 54 / 477.

Mandamus to compel a township treasurer to pay a certain sum upon the order of the township board was withheld where the treasurer set forth in his return to the order to show cause, that the township had by resolution directed him not to pay, and that there were no moneys in his hands with which to pay.—Murphy v. Reeder, Town Treasurer, 56 / 505.

The relation between a township and its treasurer is that of creditor and debtor; but if the treasurer converts the township moneys to his own use, as he is supposed to do if he does not pay them out on proper demand, or surrender them at the end of his term of office, the township may sue him in trover.—Monroe v. Whipple, 56 / 516.

A township treasurer's refusal to pay over public money in his hands upon proper demand at the expiration of his term of office, is a conversion with an element of criminality.—Id.

1354. Treasurer Ex Officio Member of Board of Trustees.—The township treasurer shall be ex officio member and treasurer of the board of trustees, in townships establishing rural high schools, with the same power as other members of the board. All orders on the treasurer for moneys shall be ordered by the board and signed by the secretary and president. See § 5936, being Sec. 951 of this Guide.

1355. Treasurer Not to Hold Office More Than Two Years in Succession.—No person shall be eligible to the office of township treasurer for more than two years in succession. § 2133.

1356. To Keep an Account of Receipts and Expenditures, Etc.—Each township treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose at the expense of the township, and to be delivered to his successor in office. § 2135.

1357. Annual Settlement With Township Board.—On the second Tuesday next preceding the annual township meeting, he shall account with the township board of the township for all moneys received or disbursed by him. § 2136.

An entry by a town clerk carrying an apparent balance over from the account of one town treasurer to his successor, is no evidence of the actual receipt of the money by the latter, even though his deputy had without his knowledge settled the account of the office accordingly.—Rice v. Sidney Township, 44 / 37.

A township treasurer's sureties cannot be bound by a false settlement of his accounts.—Id.

If a township treasurer's liability for funds in his hands can be discharged by anything but payment, there must at least be an intentional acceptance of another's responsibility instead.—Id.

Where a township treasurer settled with the township board for a certain year, and paid over the balance found due to his successor, and it was afterwards claimed by the township that in such settlement the treasurer had only been charged with the amount of taxes to be raised as stated in the supervisor's warrant in assessing which an excess had been levied and collected by the treasurer, which he denied, and suit was brought by the township to recover such excess, the issue was for the jury, which, if found in favor of the township, entitled it to a verdict for such excess, and interest thereon from the date of such settlement.—Township of Boardman v. Flagg, 70 / 372.

Moneys in the hands of a township treasurer are public funds, and the township is not estopped, by a settlement made with him by the township board, from recovering any balance remaining in his hands and not accounted for on such settlement.—Id.

1358. Bonds, Sureties, Etc., of Treasurer.—Each township treasurer, within the time limited for filing his oath and before he shall enter upon the duties of his office, shall give a bond to the township in such sum and with such sureties as the supervisor shall require and approve, conditioned for the faithful discharge of the duties of his office, and that he will faithfully and truly account for and pay over according to law all moneys which shall come into his hands as such treasurer, and the supervisor shall endorse his approval thereon. § 2134. [See Form No. 90.]

The bond must be given to the township. An action by the township on a bond given to

the people of the State of Michigan, instead of to the township, cannot be maintained.—LaGrange v. Chapman, 11 / 499. The sureties are liable only for the acts and defaults of the treasurer committed during the term for which the bond was given. The sureties on a bond for a second successive term are not liable for any defaults of a prior term.—Paw Paw v. Eggleston, 25 / 36. Moneys which a treasurer appropriated unlawfully during a certain term were embezzlements of that term and of no other, and his sureties once liable for money thus taken, can only be discharged when he or they make good the specific sums falsely charged.—Detroit v. Weber, 29 / 30.

1359. Clerk to Record Bond and Deliver to Supervisor.—It is the duty of such treasurer to file within the time above mentioned said bond with the township clerk of such township, who shall record the same in a book to be provided for that purpose. The township clerk shall, after recording same, deliver it to the supervisor who shall file it in his office. § 2134. [See Form No. 90.]

1360. Depository for Township Funds.—The township board of any township may provide by resolution for the depositing of any or all moneys coming into the hands of the treasurer of said township, and the treasurer shall deposit said money in such bank, banks or depository within the county in which said township is located as the township board may direct, subject to the provisions of this act. Any interest which may accrue upon such deposit shall be paid into the general fund of such township. No bank or depository shall receive a larger deposit of said funds than the amount of the bond as hereinafter provided, and in no event to exceed one hundred thousand dollars, and such bank or banks shall give a good and sufficient bond to be approved by the township board, conditioned for the receipt, safekeeping and payment of all money which may come into its custody, in the amount designated as the penalty in the bond furnished by the township treasurer to the township. It is the duty of the treasurer of said township to see that a sum in excess of the amount of the bond is not deposited in such bank or banks, and said treasurer and his bondsmen shall be liable for any loss occasioned by deposits in excess of the amount of such bond. The township board of each township shall determine in such resolution the time for which such deposits shall be made, and all details for carrying into effect the authority herein given, but all such proceedings in connection with the deposit of such moneys shall be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection. When a depository is provided as authorized herein and the funds are deposited therein as herein directed, the treasurer of the township and his bondsmen shall be relieved of any liability occasioned by the failure of the bank or banks of deposit or the sureties for such bank or banks, or by the failure of either of them to safely keep and repay said funds, except as herein provided in cases of excessive deposits. § 2134.

1361. Treasurer to Give Bond to County Treasurer.—The treasurer, on or before the twenty-eighth day of November, shall give to the county treasurer a bond running to the county, in double the amount of state and county taxes, with sufficient sureties, to be approved by the supervisor of the township and the county treasurer, conditioned that he will pay over to the county treasurer as required by law, all state and county taxes which he shall collect during his term of office, and duly and faithfully perform all the other duties of his office. When said bond is furnished by a surety company authorized to transact business under the laws of this State it shall be sufficient that said bond be equal to the amount of state and county taxes, plus ten per cent thereof. § 4038.

1362. To Deliver Receipt for Bond to Supervisor, and Receive Tax Roll.—The county treasurer shall file and safely keep such bond in his office, and shall give to the township treasurer a receipt stating that he has received the bond required, which receipt the township treasurer shall deliver to the supervisor on or before the first day of December. The supervisor after the delivery of such receipt and on or before the first day of December, shall deliver to the township treasurer the tax roll of his township. § 4038.

1363. When New Bond May be Required.—Whenever the sureties in the bond given by any township treasurer to the county treasurer, as required by law, shall become insolvent, or shall remove out of the county, or shall in the opinion of the county treasurer, become in any manner insufficient, the county treasurer shall give notice thereof to the supervisor of the township, and that such township treasurer is required to give a new bond to the county treasurer. § 2137. The same provisions are made applicable in case new bond is required by the township board. See Sec. 696 of this Guide.

1364. Time Within Which to Give New Bond.—Whenever the county treasurer or township board of the township shall require a new bond of the township treasurer, as in this act (§ § 2137-43) provided, it shall be the duty of the supervisor forthwith to notify such township treasurer in writing of such requirement, and that he is required to give such new bond or bonds, as the case may be, within such time, not less than five nor more than ten days after such notice as the supervisor may prescribe. § 2139.

When any new bond shall be required of any township treasurer, it shall be his duty to give the same to the township, or the county treasurer, as the case may be, within the time prescribed by the supervisor, such bond to be of the amount and to be approved as now required by law in cases of bonds required to be given by such treasurers to the township or to the county treasurer. § 2140.

1365. If New Bond Not Given, New Treasurer May be Appointed.—If any township treasurer shall neglect or refuse to give any new bond required of him as herein provided, such refusal or neglect shall be deemed a refusal to serve, and thereupon the township board shall appoint a new treasurer for the remainder of the year, who shall give like security and be subject to like duties and penalties, and have the same powers and compensation as the treasurer in whose place he was appointed; and the township clerk shall immediately give notice of such appointment to the county treasurer, but such appointment shall not exonerate the former treasurer or his sureties from any liability incurred by him or them. § 2141.

1366. Treasurer May be Appointed in Case of Vacancy, Etc.—In case the treasurer of any township shall refuse to serve, or shall vacate his office before completing the duties thereof, or be disabled from completing the same, by reason of sickness or any other cause, the township board shall forthwith appoint a treasurer for the remainder of the term, who shall give like security, and be subject to like duties and responsibilities, and have the same powers and compensation, as the treasurer in whose place he was appointed, and the township clerk shall immediately give notice thereof to the county treasurer; but such appoint-

ment shall not exonerate the former treasurer, or his sureties, from any liability incurred by him or them. § 2108. See also Sec. 697 of this Guide. [See Form No. 25.]

1367. Former Treasurer to Deliver Money and Roll to Successor, Etc.—Whenever any township treasurer appointed as provided in section 697, shall have given the security required by law, the former treasurer shall forthwith deliver over all moneys in his hands by virtue of his office, and the tax roll for the year if the same shall have been delivered to him, to such new treasurer; and shall, whenever required by the township board of the township, account to them for all moneys received or disbursed by him. § 2142.

1368. Tax Roll Not to Be Delivered Until New Bond is Filed.—When any new bond shall be required of any township treasurer, as in this act (§ § 2137-43) provided, the tax roll of the township for the year shall not be delivered to him until he shall have given the required security. § 2143.

1369. Penalty for Obstructing Treasurer, Etc.—The wilful obstruction or resisting of a treasurer or constable in the performance of his duties is punishable by imprisonment or fine. See § 14994.

1370. Payment by Treasurer of Highway Orders.—Orders for the payment for labor or material, according to the provisions of the General Highway Law, shall be signed by the commissioner and countersigned by the township clerk, and no money applicable to any such purpose shall be paid by the township treasurer excepting upon such orders, accompanied by the certificate of such commissioner, that the labor has been actually performed, or the contract fulfilled or materials furnished for the payment of which such order was drawn; * * * and any township officer violating any provision of this section shall forfeit to the township the sum of one hundred dollars for each offense. § 4474. See Sec. 1444 of this Guide.

1371. Duty of Treasurer and Clerk When Payment of Highway Orders Delayed Six Months.—Whenever any order for the payment of money lawfully drawn by the highway commissioner of any township within this State upon the treasurer of such township, shall, after the passage of this act, have been duly presented to such township treasurer for payment, and payment thereof shall not be made within six months from such presentation, by reason of lack of funds for the lawful payment of such order, such treasurer shall, at the request of the holder of such order, make a statement in writing of such facts and deliver the same to such holder, and such holder may present such order with such statement to the township clerk of such township, and such clerk shall thereupon make a minute of the number, date, and amount of such order, and the date of its first presentation to such treasurer, and shall make an endorsement on such order, showing such presentation to him. The township clerk of each township shall include in the statement annually required to be made by him to the supervisor of moneys proposed to be raised in said township by taxation, a statement of the amounts of all such orders, before then minuted by him, with a further statement of the amount due and to become due as interest on such orders up to the first day of January succeeding such statement. § § 4556-57.

COLLECTION OF ORDERS: Mandamus lies, not assumpsit, to compel a township board

to pay a valid order given by the highway commissioner on the township treasurer.—Just v. Wise, 42 / 573. A delay of more than six years to demand pay of highway orders, or to apply for mandamus to compel such payment, if unexplained, will bar such relief.—Avery v. Twp. of Krakow, 73 / 622. See Section 194 and notes.

1372. Paying Over of Funds.—Treasurers are required to pay over the same description of funds received by them in the collection of taxes, or other public dues. See Sec. 296 of this Guide.

CHAPTER II.

DUTIES OF TREASURER RELATING TO THE COLLECTION OF TAXES AND THE DISPOSITION OF PUBLIC MONEYS.

1373. Warrant of Supervisor to Treasurer.—The supervisor's warrant commands the collection of all taxes, the retaining of the proper amounts in the treasury and payment to the county treasurer of amounts for State and county purposes; also authorizes levy and sale by distress, etc. See Sec. 1082 of this Guide.

An unsigned, undated warrant to a tax roll is insufficient.—Westbrook v. Miller, 64 / 129.

1374. Extension of Time for Collecting Taxes.—That whenever any township, city or county treasurer does not receive the tax roll within the time specified under the provisions of section forty-three of this act by reason of any delay caused by an appeal to the board of state tax commissioners as provided by act number two hundred one, public acts of nineteen hundred thirteen, such treasurer shall receive taxes appearing on such roll with the additional charge of one per cent for a collection fee for the period of thirty days after the receipt of the tax roll, except in counties, cities or townships where some special provision is made by law for a collection fee the treasurer shall comply with such special provisions during said thirty-day period. On all taxes unpaid at the expiration of said thirty-day period he shall add four per cent, and on or before the expiration of sixty days from the receipt of said tax roll by said township or city treasurer he shall make a return to the county treasurer of the uncollected taxes assessed on real and personal property as provided by section fifty-five of this act, the General Tax Law, Sec. 43a. Added by Act 1 of 1917.

Section 43, above referred to, is § 4038 C. L. of 1915. See Section 1362 of this Guide.

1375. Collection of Taxes by Treasurer, His Fees, Salary, Etc.—On receiving such tax roll, the township treasurer or other collector shall proceed to collect such taxes. The township treasurer shall remain in his office at some convenient place in his township, village or city on every Friday in the month of December thereafter, from nine o'clock a. m. to five o'clock p. m. to receive taxes: Provided, however, That he shall receive taxes upon any week day when they may be offered, and on all sums voluntarily paid before the tenth day of January of the succeeding year, he shall add one per cent for collection fees, and upon all taxes paid on or after said tenth day of January he shall add four per cent. In townships where the taxes assessed and levied amount to fifty thousand dollars and upwards the township treasurer shall receive in lieu of fees, a salary of not less than six hundred dollars per year, said salary to be fixed by the township board, payable from the contingent fund of the township as follows: One-half of said sum on the tenth day of January,

and the balance of said sum at the time the delinquent tax rolls are returned each year. All fees collected by the township treasurer in townships where the taxes assessed and levied amount to fifty thousand dollars or more, shall be credited to the contingent fund of the township. The salary so paid shall cover the making out of the delinquent tax rolls as well as the collection of taxes, when the bond of said treasurer, as provided in section forty-three, shall be furnished by a surety company, the cost of said bond shall be paid by the township from the contingent fund of said township. In case the township treasurer may be apprehensive of the loss of any personal tax assessed upon his roll, he may proceed to enforce its collection at any time, and if compelled to seize property or bring suit in December, may add four per cent for collection fees, and when taxes are assessed on property occupied by tenant or tenants paying rental therefor, and he is assessed as occupant of said premises, the said tenant or tenants shall be liable for the taxes assessed on said property after the time said tax roll is delivered to the township treasurer or other collecting officer for the year, but not for more of the same than the amount of the rental may be while said tax roll is in his hands and which becomes due to the owner during such period, and may be collected in the same manner as provided for collecting the same from persons owning and occupying their own property; and said collecting officer shall notify all such persons occupying rented property, or so far as he may know of the same, as soon as the tax roll is delivered to him, by written notice, and shall note said notice and the date thereof against the description of said property on the roll: Provided, That the provisions of this act as to amend salary of township treasurers in lieu of fees, shall not apply to township treasurers whose salaries are now fixed by any local or special act, in effect at the time of the taking effect of this act. § 4039.

If a collector receives money under directions to apply it to the payment of a particular tax, he cannot apply it to other taxes due from the person paying.—Fuller v. Grand Rapids, 40 / 395. Debt or indebitatus assumpsit is the proper form of the action which a township treasurer may bring in the name of the township, for the amount of taxes assessed against an individual; the counts of the declaration should briefly explain the subject matter of the debt, though a special declaration is not needed.—Putnam v. Fife Lake, 45 / 125. A township treasurer cannot sue for the amount of a tax after his warrant for collecting it has expired.—Id. Assumpsit lies to recover back money paid into a township treasury in satisfaction of taxes illegally assessed and collected.—Daniels v. Watertown, 55 / 376. A township's liability to refund the amount of an illegal tax collected by the township treasurer is fixed by proof that he took the money in his official capacity.—Id. Payment of a personal property tax before January 1st, without demand therefor, or threatened or actual levy, though made under protest, is a voluntary payment, and recovery cannot be had.—Baker v. City of Big Rapids, 65 / 76. A township treasurer is not authorized to accept anything except money in payment of taxes.—People v. Seely, 117 / 263. The mere fact that a levy for taxes by a township treasurer included an insignificant item in which the township is interested, will not authorize the township to employ an attorney to defend suits against the treasurer growing out of such levy where the levy was almost entirely for drain taxes, the validity of which is the real matter in controversy.—Jenny v. Township of Mussey, 121 / 229. A township treasurer's possession of property seized for taxes is not the possession of the township, and does not, therefore, impose upon the township the legal duty of defending an action against him growing out of such levy.—Id.

1376. Referendum on Proposition to Pay Salary to Treasurer.—The provisions of this act relating to the salary of the township treasurer shall not apply in any township in this State until adopted by the electors of said township in the manner herein provided. Upon petition of not less than five per cent of the resident electors of any township, addressed to the township board, it shall be the duty of said board to submit the question of the adoption of the provisions of this act in said township, at the first general or special election held after the receipt of said petition. All votes on the question shall be taken, counted and canvassed in the

same manner as votes cast for candidates at said election in said township. The vote upon the proposition of adopting this act shall be by ballot which shall be in substantially the following form:

"Vote on proposition of adopting the provisions of an act placing the township treasurer of this township upon a salary in lieu of fees.

Make a cross in the appropriate square below.

To adopt the provisions of said act—Yes ( )

To adopt the provisions of said act—No ( )"

Such ballots shall be furnished by the township board and shall be deposited in ballot boxes provided for that purpose. If a majority of the electors voting upon such proposition shall vote in favor of the adoption of that portion of this act which would place the treasurer thereof upon a salary basis, then that portion of this act shall be in full force and effect and not otherwise within such township. § 4040.

1377. Time for Collection of Taxes, Etc.—All taxes shall be collected, by the several township treasurers, before the first day of March, in each year. § 4041. See also Sec. 1374 of this Guide.

1378. Treasurer to Make Personal Demand for Taxes During January.—For the purpose of collecting the taxes remaining unpaid on the tenth day of January, the said treasurer shall, thereafter during that month, call personally upon each person liable to pay such taxes, if a resident of such township, or at his usual place of residence or business therein, and demand payment of the taxes charged against him. If such person is not a resident of the township, but resides within the county, or an adjoining county, and his residence is known to the treasurer, he shall make such demand either personally or by mail. In cases of companies or corporations demand may be made at the principal or other office of such company or corporation, or by mail directed to such corporation or company, or its principal officer at its usual place of business. If demand is sent by mail, the amount of the tax shall be stated, and the place and time where and when it may be paid. He shall give a receipt for every tax paid, and shall enter in ink the fact of payment, and the date thereof upon his tax roll. In case of taxes assessed upon the shares of the capital stock of any bank he shall call upon the cashier of such bank and demand payment thereof, and thereupon it shall be the duty of such cashier to pay the same, and charge the amount so paid against the shares of stock so taxed. § 4042.

If the treasurer, as collector, receives worthless orders in payment of taxes, and receipts and returns them as paid, he must account for the amount of taxes in money, and if there is loss on the orders, he must bear it.—Staley v. Columbus, 36 / 38. If without authority of law he receives anything in lieu of money, he must account for it as money.—Id. A demand of payment of a tax by an officer having a warrant involves an implication that payment will be enforced if not made and an actual levy is not required, or proof that a levy could be made on tangible property. If the party yields to the legal menace, it cannot be presumed, in favor of the exactor of payment, that he could have found nothing to levy on, or that there were no means of enforcement.—Babcock v. Township of Beaver Creek, 64 / 601.

1379. Collection by Seizure and Sale of Personal Property.—If any person, firm or corporation neglects or refuses to pay any tax assessed to him or them, the township treasurer shall collect the same by seizing the personal property of such person, firm or corporation, to an amount sufficient to pay such tax, fees and charges for subsequent sale, wherever the same may be found in the State, and from which seizure no property shall be exempt. He may sell the property seized to an amount sufficient to pay the taxes and all charges, in the place where seized, or in the

township of which he is treasurer, at public auction, on giving public notice of the same at least five days previous to the sale, by posting written or printed notices in three public places in the township where the sale is to be made, which sale may be adjourned from time to time if he shall deem the same necessary; and in case property shall be seized and advertised as herein directed, during the life of the warrant, the sale may take place at any time within six days after the expiration thereof. If it becomes necessary to sell personal property which brings more than the amount of taxes and charges, the balance shall be returned to the person, firm or corporation from whose possession the property was taken, except as hereinafter provided. If the property so distrained cannot be sold for want of bidders, and in such cases only, the treasurer shall return a statement of the fact, and such tax shall be returned as unpaid. The township treasurer, if otherwise unable to collect a tax on personal property, may sue the person, firm or corporation to whom it is assessed, in the name of the township and garnishee any debtor or debtors of such person, firm or corporation. The tax roll shall be prima facie evidence of the debt sought to be recovered. But when any person having possession of the personal property of any other person, firm or corporation shall be assessed for such property and shall be obliged to pay the taxes thereon, such person, firm or corporation so paying the taxes, may recover of the person, firm or corporation for whose benefit the taxes were paid, the money so paid, with the interest thereon in an action of assumpsit. In case levy is made, as hereinbefore provided, for taxes assessed upon land, the levy shall be released if, within ten days after it is made, the persons having the title to said land shall deliver to the commissioner of the state land office a deed conveying the land to the State as to an individual, free from all mortgages or liens whatsoever, and in such case the taxes thereon shall be returned as in the case of other taxes unpaid upon lands, and the auditor general shall charge back to the county all local taxes on said land and shall cancel the state taxes thereon; and in case land is so deeded to the State it shall thereafter be subject to all the provisions of law governing lands deeded to the State by the auditor general under the provisions of section one hundred twenty-seven of act two hundred six of eighteen hundred ninety-three as amended (§ 4126, C. L. of 1915). In case the land is deeded to the State as herein provided the board of state auditors shall audit and allow the actual expenses of the township treasurer incurred in making the levy on said land and compensation therefor at two dollars per day, the account therefor to be certified by the commissioner of the state land office, and the amount thereof shall be paid out of the general fund of the State. § 4043. [See Form No. 91.]

See notes to Section 1378 of this Guide.

A tax collector is protected by process that is fair on its face against any illegalities except his own.—Bird v. Perkins, 33 / 29. Payment of a personal tax is not voluntary when made under protest, and for the purpose of avoiding the immediate seizure of goods to satisfy it.—Brown v. Dean, 52 / 271. Goods assigned for the benefit of creditors are exempt from levy to satisfy a personal tax during the ten days allowed to the assignees for filing their bond.—Id. Where an insolvent firm has assigned its stock for the benefit of its creditors, a personal tax against the firm cannot be satisfied from the stock in the hands of the assignee upon any other terms than any other claim; and if the assignee pays the tax under protest in order to avoid seizure of the stock, he can bring suit against the officer collecting it, to recover it back, so long as it remains in the officer's hands.—Id. A township treasurer is not liable in trover, or in any action in tort, for enforcing the collection of an excessive tax, if his warrant therefor from the supervisor is fair on its face.—Byles v. Genung, 52 / 504. Payment of taxes under verbal protest, to release property from seizure, is involuntary payment.—Babcock v. Beaver Creek Township, 65 / 479. A payment of taxes in advance of the time it can be enforced is voluntary, and cannot be recovered back without statutory permission.

—Cox v. Welcher, 68 / 263. Where payments are involuntary, and made under legal duress, there has never been any rule requiring a specific protest.—Id. The attempt to compel payment where there is no legal burden is regarded as a legal injury, and payment made to avoid the seizure and sale of property to pay the wrongful claim may be recovered back as an extorted sum for which there was no consideration.—Id. Held, where a township treasurer seizes property for taxes by virtue of a warrant annexed to a roll certified to be a copy of the original assessment roll, that the taxpayer cannot maintain replevin for the property so seized, because the warrant is in fact annexed to the original assessment roll instead of a copy.—West Mich. Lumber Co. v. Dean, 73 / 459. Defendant, a township treasurer, sold two horses belonging to plaintiff, by virtue of a warrant annexed to the tax roll of his township. The horses were sold together, and bid in by defendant's brother for the amount of the tax. The horses were not a matched team, nor did it appear that it was better for the interest of the parties to sell them together, and from an appraisal it appeared that either of the horses was worth more than the amount of the tax. Held, that defendant should have sold the horses separately, and his failure to do so made the sale void.—Leaton v. Murphy, 78 / 77. A township treasurer is not liable in trover for property seized under a tax roll and warrant fair upon their face.—Mogg v. Hall, 83 / 576. In a suit to recover a tax upon personal property, the judgment may include interest thereon, computed from the time it became due and payable.—Grand Rapids v. Welleman, 85 / 234.

1380. Fees of Treasurer for Selling Property.—In case of a distress and sale of goods and chattels for the payment of any tax, the treasurer or other collecting officer may also collect on such sale one dollar and fifty cents over and above the tax, as his fees for making such sale, which fees and percentage hereinbefore provided shall be in full for his services in collecting such taxes; and in case payment of such tax shall be made after the distress and before the sale, it shall be lawful for such treasurer or collecting officer to require the payment of one dollar and fifty cents as his fees for making such distress, and to enforce payment of the same, if need be, by making sale notwithstanding the tax shall have been paid. § 4044.

1381. Collection in Case of Removal of Personal Property.—Whenever any personal property having been assessed to any person in any township in this State, shall be removed therefrom before the taxes assessed thereon shall be collected, and there being no other personal property sufficient in said township whereon the treasurer or other collecting officer can levy and collect said taxes, or any of them, he shall have full power, and it shall be his duty, to make a statement, duly certified by him to be correct and true, showing that personal property has been assessed to such person, naming him, the valuation thereof, the various taxes thereon, and the total thereof, as appears from the roll in the hands of such treasurer, and that such property has been removed from such township since the assessment thereof, and that the taxes, or some portion of them, has not been paid; which statement shall be witnessed and acknowledged in the same manner as deeds of real estate are acknowledged, and shall be received in all courts and other places as evidence of the facts therein contained, without proof of its execution, and shall be prima facie evidence of the validity of the tax therein named against the person therein named, and shall be full and ample authority to the treasurer or other tax collector to whom it shall be sent to levy and collect the same in the same manner as other personal taxes are collected by him when spread upon his own roll. Such statement may be sent to the township or city treasurer, or other collecting officer of any township or city in this State where the person against whom such assessment was made may have property, and the treasurer, or other collecting officer to whom such statement shall have been transmitted, shall, upon receipt of the same, proceed to collect said taxes out of any property belonging to the owner of such property, so taxed as aforesaid, within his jurisdiction liable to be seized for taxes, together with double collection fees therefor, and the

further sum of twenty-five cents to defray the expense of transmitting the taxes so collected as hereinafter provided, and shall give his receipt therefor. The said treasurer, or other collecting officer, shall thereupon transmit the taxes, and one-half of the collection fees as aforesaid collected, to the township treasurer, or other collecting officer, from whom he received such statement, and the latter shall, upon the receipt of said taxes and collection fees, mark the said taxes in ink as paid upon his tax roll, and the date of the receipt of the same, retaining the collection fees so received as aforesaid, as his fees in the matter of the collection of said taxes. § 4044.

1382. Execution on Judgment for Taxes, Etc.—Executions issued upon judgments rendered for any tax may be levied upon any property, without exemption, the same as though seized for sale under warrants issued for the collection of taxes by township supervisors, and collected in the same manner, in all other respects, as provided by law for the collection of judgments. § 4044.

1383. Disposition of Surplus from Sale of Property, Etc.—Whenever a surplus arising from the sale of any property distrained for taxes shall be claimed by any other than the person for whose tax such property was sold, and such claim shall be contested, either of the contestants may prosecute an action against the other, as for money had and received, and in such action the rights of the parties to such surplus shall be determined. For the purpose of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the treasurer, and upon the presentation to said treasurer of a certified copy of the final judgment rendered in such action, he shall pay over the same to the party recovering such judgment; and no such treasurer shall be liable to any claimant of such surplus, the right to which is contested as provided in this act, until he shall have refused to pay over such surplus, upon the production of a certified copy of the judgment as aforesaid. In any action brought pursuant to this section no other case shall be joined nor shall any set-off be allowed; and if an execution issue on a judgment so rendered, it shall direct the costs only of such action to be levied by virtue thereof. § 4045.

1384. When New Town Treasurer May be Appointed.—In case any township treasurer shall neglect to give either of the bonds required, or shall die, resign or remove out of the township or become unable to discharge the duties of his office, the township board shall forthwith appoint a new treasurer, who, on giving the required bonds, shall execute the duties of the office for the remainder of the year and until his successor is elected and qualified. The township clerk shall immediately notify the county treasurer of such appointment. § 4046. [See Form No. 25.]

1385. Disposition of Tax When Full Amount Not Collected.—In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him, to be paid out for the following purposes: The amount of school taxes collected to be paid on the order of the school district officers, the amount collected for general township purposes to be paid on the order of the township board, the amount collected for highway purposes to be paid on the order of the commis-

sioner of highways countersigned by the township clerk or supervisor, and the amount collected for any special fund to be paid on the order of the proper officer, but in no case shall the amounts collected for any one fund be paid on the orders drawn on any other fund. § 4048.

For similar provision see § 4498, C. L. of 1915.
The liability of a township treasurer for school moneys is distinct from his ordinary liability for township moneys, and it cannot be released or in any way affected by the action of the township board.—Jones v. Wright, 34 / 372; Muskegon City v. County, 123 / 274.

1386. From Whom Treasurer to Receive Taxes.—Any person may pay the taxes, or any one of the several taxes on any parcel or description of land, or on any undivided share thereof and the treasurer shall note across the face of the receipt in ink any portion of the taxes remaining unpaid. He may pay any tax, whether levied on personal or real property, under protest, to the treasurer, specifying at the time, in writing, signed by him, the grounds of such protest, and such treasurer shall minute the fact of such protest on the tax roll and in the receipt given. The person paying under such protest may, within thirty days and not afterwards, sue the township for the amount paid, and recover, if the tax is shown to be illegal for the reason shown in such protest. When payment of the taxes on any parcel or description of land or on any undivided share thereof, is made to any city, village or township treasurer, said treasurer shall place or cause to be placed upon the face of the receipt the following certificate: "I hereby certify that application was made to pay all taxes due and payable at this office on the description ..... shown in this receipt.

(Signed) ....., Treas."

Any person owning an undivided share or other part or parcel of real property assessed in one description may pay on the part thus owned, by paying an amount having the same relation to the whole tax as the part on which payment is made has to the whole parcel. The person making such payment shall accurately describe the part or share on which he makes payment, and the receipt given, and the record of the receiving officer shall show such description, and by whom paid; and in case of the sale of the remaining part, or share for non-payment of taxes, he may purchase the same in like manner as any disinterested person could. Any person having a lien on property may, after thirty days from the time the tax is payable, pay the taxes thereon, and the same may be added to his lien and recovered with the rate of interest borne by the lien. A tenant of real estate may pay the taxes thereon and deduct the same from his rent, unless there be an agreement to the contrary. Such payment may be made to the township treasurer while the tax roll is in his hands, or afterwards to the county treasurer. The receipt given shall be evidence of such payment. § 4049.

Under this section, which provides that any person may pay any tax, whether levied on personal or real property, under protest, to the township treasurer, specifying at the time, in writing signed by him, the grounds of such protest, and may within thirty days, and not afterwards, sue the township for the amount paid, and recover if the tax is shown to be illegal for the reasons specified in such protest, a right of recovery exists only where the tax itself is shown to be illegal.—Lumber Co. v. Township of Manistee, 100 / 466. In order to warrant a judgment for the plaintiff in a suit brought to recover taxes paid under protest, there must have been such jurisdictional defect as to render the tax void, and not a mere irregularity in spreading the tax, or informality in the warrant for its collection.—Sheldon v. Township of Marion, 101 / 256.

1387. When to Pay Taxes to County Treasurer.—Within one week after the time specified in his warrant the township treasurer or other

collecting officer shall pay to the county treasurer all State and county taxes collected, and within the same time shall make his statement of unpaid taxes upon real and personal property as required in the following section. § 4050.

1388. Town Treasurer to Make Statement of Unpaid Taxes.—If the township treasurer or other collecting officer shall be unable to collect any of the taxes on his roll, assessed on real property, he shall make a statement of the same with a full and perfect description of such property, as assessed upon said roll, with the several taxes assessed upon each parcel thereof, which statement shall be verified by the affidavit of such treasurer or collector that such taxes remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels, liable to pay such sums whereupon he could levy the same. The said treasurer or collector shall also make a statement showing the taxes upon personal property remaining unpaid, and the names of the persons against whom assessed, and the amount against each; and in such statement shall set forth the amount of all moneys collected by him on account of taxes, which statement shall be verified by the affidavit of such treasurer, in which he shall state in substance that the sums mentioned in such statement as uncollected remain unpaid; that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the person liable to pay such sums, whereupon he could levy the same, and that the amount of moneys collected by him upon such tax roll is truly stated therein. The county treasurer shall immediately compare such statements with the said tax roll, and if he finds the same to be correct, he shall add to each of them a certificate showing that he has examined and compared such statements with the said tax roll and found them correct, and shall file such statements in his office. The county treasurer shall, at the time of making such comparison, and at no other time, reject any tax upon any land which shall have been twice assessed, or upon any parcel which shall be so erroneously or defectively described upon the tax roll that it cannot be correctly and easily ascertained. § 4051. [See Form No. 92.]

1389. Receipt of County Treasurer for Money Paid, and Statement of Rejected Taxes.—The county treasurer shall give to the township treasurer a receipt, stating the amount of moneys paid to him by such treasurer, for which the township shall receive a credit on the books of the county treasurer, and he shall also give the township treasurer a statement of all taxes rejected by him, the amount of delinquent taxes returned, and the amount of any unpaid taxes on personal property, which receipt and statements shall be the vouchers of such treasurer of the amounts specified therein. § 4051.

1390. Settlement of Township Treasurer With County Treasurer.—The county treasurer shall thereupon indorse the fact of such settlement on the bond of the township treasurer, which indorsement shall operate as a discharge of the treasurer and his sureties from the obligation thereof, unless the return of such treasurer is incorrect, in which case such bond shall continue in force, and such treasurer and his sureties shall be liable thereon for all damages occasioned by such incorrect returns; and the township treasurer shall immediately deposit his tax roll with the county treasurer, who shall file and preserve the same in his

office, and which said roll or a duly certified copy thereof, shall, for all purposes, in all courts, suits and proceedings, be taken, held, and used as evidence, in the same manner and with like effect as the original roll. The county treasurer shall give the township treasurer a statement of all the personal taxes which remain uncollected, taken from the return of the latter, with a warrant authorizing him or his successor to collect them according to law, and thereafter such treasurer or his successor shall have the same power to collect such taxes as under the original warrant. § 4052.

City and township treasurers are required to pay to the county treasurer the full amount of the tax levy upon personal property, whether it has been collected or not.—City of Muskegon v. County of Muskegon, 123 / 272. If there is a balance due the State, as there may be from a failure to collect the full amount of personal tax, the county must make it good.—Id., also see Aud. Gen. v. Bolt, 124 / 185.

1391. Return of Homestead Lands by Treasurer.—Licensed homestead lands, the fee of which is in the State or the United States, when the licensee is entitled to make his final proof to obtain a patent shall be returned as other real property. See Sec. 1040 of this Guide.

1392. County Treasurer to Render Statement of Account Between County and Township.—The county treasurer of each county shall, on or before the first day of February, May, August and November in each year, make out a detailed statement of the account between the county and the several townships, which statement shall show the different funds to which the several debits and credits belong, and render the same to the township treasurer, and pay all moneys shown by said statement so rendered to the township to the proper receiving officer, and notify the township clerk of the items and total amount thereof; also a description of the lands upon which such taxes were paid. The county clerk shall charge such amounts to the county treasurer, and the township clerks shall charge such amount to the township treasurers on the books of their respectice offices. In the county of Kent the county treasurer shall not be required to make a detailed statement. § 4085.

Mandamus will not lie to compel a county to pay over to a township moneys claimed to be due the township for delinquent taxes received by the county from the auditor general and from individuals, where the account between the county and the township has not been stated, and no settlement has been made showing the state of said account.—Township of Cumming v. County of Ogemaw, 93 / 314.

1393. Collection of Taxes Not to be Affected by Organization of New County or Division of Township.—The organization of a new county after the time for making the assessment roll and prior to the return of the township treasurer, shall in no way affect the collection and return of taxes for that year on any lands attached to the new county, and no division of a township after the time for making the assessment roll, and prior to the return of the township treasurer shall in any way affect the collection and return of such taxes. See Sec. 1089 of this Guide.

1394. Injunction Not to Issue.—No injunction shall issue to stay proceedings for the assessment or collection of taxes under this act. § 4113.

The provisions in the tax laws prohibiting the issuance of injunctions to restrain the assessment or collection of taxes are not unconstitutional, as those acts provide a remedy by suit to recover taxes paid under protest.—Lake Superior Ship Canal Railway and Iron Co. v. Aud. General, 79 / 351.

1395. Replevin Will Not Lie.—No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine, in pursuance of any statute of this State. § 13081.

Covers a case where property is seized for a tax which appears on the roll to be regularly

assessed in a township where it was subject to be assessed, and which is presumably valid, even though in fact the assessor has made an unauthorized change in the assessment roll in regard to the property.—Hill v. Graham, 72 / 659.

1396. **Liability for Failure to Make Proper Return.**—If any officer to whom any tax is paid shall fail to make proper entry and return of such payment, he shall be liable to any person injured for the full amount of the injury, and if such failure is wilful he shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished by imprisonment in the county jail not more than six months, or by fine not more than three hundred dollars. § 4116.

1397. **Duty of Treasurer Relating to Irregular or Illegal Taxes.**—In all cases where any person, company, association, or corporation shall voluntarily and without protest pay to the officer demanding the same, and having a tax warrant or other process for the collection thereof, any sum or sums of money purporting by such warrant or process to be payable by such person, company, association or corporation for taxes or assessments, assessed, levied, or imposed by virtue of any law of this State, neither the officer so collecting the same, nor the officer who issued such warrant or process, nor the officer who made the assessment or levy, shall in consequence of such payment be liable in any form of action for or on account of any defect or invalidity in the law under which the proceedings are had, or of any defect or irregularities in the said proceedings, or in such warrant or process. That whenever moneys shall have been thus voluntarily paid as taxes or assessments to any officer assuming to act under any law of this State, and he shall fail to pay the same over according to the requirements of such law, or of his warrant or other process, any defect, irregularity, or illegality in the proceedings, or any want of authority to assess or levy such taxes or assessment, shall not be set up as a defense to any suit or proceeding brought or instituted to compel such payment by him, or to hold him or his sureties responsible for his neglect to make the same, but he shall make payment the same as if no such defect, irregularity, illegality, or want of authority had occurred or existed. § 4196-97.

1398. **Collection of Delinquent Taxes on Part-paid Lands.**—It shall be the duty of the township treasurer to collect and return such taxes in the same manner as provided for the collection and return of other taxes. § 4185.

1399. **Collection of Highway Taxes.**—The township treasurer shall keep separate accounts of the road repair and highway improvement taxes, and such taxes shall be collected in the same manner as taxes for general township purposes. § 4323.

1400. **Public Library Tax.**—It is the duty of the treasurer to collect the tax voted by the township for a public library. See Sec. 89 of this Guide.

1401. **Collection and Payment of Judgments Against Township.**—It shall be the duty of the treasurer to collect and pay any judgment assessed by the supervisor and set forth in his warrant attached to the tax roll, to the owner thereof or his attorney, on or before the date when such tax roll and warrant shall be returnable. Neglect or refusal to comply with these provisions shall be punishable by fine or imprisonment. See Secs. 48 to 51 of this Guide.

1402. When to Sue Overseer of Highways, Etc.—If any overseer shall neglect or refuse to pay over any moneys, which have been collected by him for judgments and commutations, remaining unexpended in his hands, it shall be the duty of the township treasurer forthwith to sue for the same in his name of office, in an action for moneys had and received to the use of such treasurer, which moneys, when collected, shall be applied as provided in the next section. § 4658.

1403. How Money Expended.—All moneys that may be collected pursuant to the last preceding section, or pursuant to § 4650, and all unexpended balances that may be paid to the township treasurer by overseers, shall be applied by the commissioner in the construction and improvement of roads and bridges in the road district for the benefit of which the labor was originally assessed. § 4659.

For § 4650 above referred to see Section 1741 of this Guide.

1404. To Restrain Waste on Certain Lands Upon Which the Tax is Unpaid.—When any person, co-partnership, company or corporation neglects or refuses to pay any tax assessed on the lands of such person, co-partnership, company, or corporation after such tax shall have become a lien upon said lands and before the expiration of the warrant attached to his tax roll, the township treasurer shall make application for and be entitled to an injunction to restrain waste on any of such lands upon which the taxes shall remain unpaid, and to prevent the cutting of any timber standing or growing thereon, or the removal of any timber, wood or logs, or the tearing down or removing of any buildings therefrom. Any circuit judge or circuit court commissioner of the county in which such lands are situated may on application of such township treasurer make an order restraining any person, co-partnership, company or corporation from committing waste on any such lands by the cutting of any timber standing or growing thereon or the removal of any timber, wood or logs, or the tearing down or removal of any buildings therefrom. § 4190.

The foregoing section, authorizing the issuance of injunctions at the suit of township treasurers to restrain waste upon lands on which taxes are due and remain unpaid, is construed as follows:

a.—The purpose of the statute is to prevent the removal of timber without the payment of the taxes assessed on the lands, and thus to secure to the State the revenue which is justly due from the owners if the tax is legal.

b.—The statute does not require that the bill shall allege and the complainant prove that the land would be worthless without the timber, or would not be worth the amount of the tax.

c.—The statute applies only to wild lands, and makes the cutting of timber on lands chiefly valuable for their timber waste, and the clear intent of the legislature was to force the payment of taxes before the land is stripped of its chief value.

d.—The township treasurer is made the agent of the State during his term of office, to commence suit whenever the occasion arises, which cannot be done while the tax roll is in his hands, nor until the time specified by law for the payment of taxes.—Caldwell v. Ward, 88 / 13.

e.—When none of the taxes are claimed to be illegal except the township tax, there can be no hardship in issuing the injunction, as this tax can be paid under protest, and the rights of the parties thereby preserved.—Rossman v. Adams, 91 / 69.

1405. To Receive Assessments Relative to Grade Separation.—In cases where proceedings for separation of grades are instituted in the name of any township, the clerk of the court shall certify the total of the assessments against any street railway company, where no award was made to said company in said proceedings, or the excess, if any, of said total of said assessments over the amount of such award, where such award was made, to the township treasurer of the township. The amount of

the assessment so certified shall then be collected by the same officer, at the same time, and in the same manner as general personal taxes are or may be collected, and shall, when collected by said collecting officers, be paid over to the treasurer of the city, county or township by which said proceedings were instituted, as the case may be, by whom it shall be placed to the credit of the fund created for the payment of the compensation on account of said changes of grade. Whether the amount of the assessments is greater than, equal to, or less than the amount of the award to said company, the treasurer of the city, county or township in whose name the proceedings were instituted shall, upon receiving certificate thereof, make an entry to that effect in the proper record, and when the fund for payment of compensation is provided, shall pay to said company the excess only of its award over said assessment. § 4772.

1406. To Pay Awards Resulting from Grade Separation.—It shall be the duty of the treasurer securely to hold such money in the treasury for the purpose of paying said awards and to pay out the same to persons entitled thereto, according to the said verdict, on demand, and not to use or pay out said money for any other purposes whatever. Said cities, counties and townships may provide their respective proportions of said amount by borrowing from any other money or fund in their respective treasuries, and repay such loan from the money raised to pay the compensation so awarded, when collected, or otherwise, as they may provide. And may cause the whole or any part of the appropriation required to pay all such sums, to be made by issue of bonds in lieu of raising the same by taxation. Said bonds shall be issued in the name of the city, county or township in the same manner as are other city, county or township bonds, and shall be denominated "Grade separation bonds." § 4774.

1407. Dog Taxes Collected by Clerk Deposited With Treasurer.—The money collected by the township clerk for dog taxes shall be deposited by monthly returns with the township treasurer. See Sec. 1319 of this Guide.

CHAPTER III.

DUTIES OF TOWNSHIP TREASURER UNDER DRAIN LAWS.

1408. Collection of Drain Taxes.—All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as State and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes. In all cases where suit is brought against the collector arising out of the collection of any drain tax, the county shall defend such officer in the same manner that he has now the right to be defended in the collection of general taxes. No suit shall be instituted to recover any drain tax or money paid or property sold therefor, or for damages on account thereof, unless brought within thirty days from the time of payment of such money to, or sale of such property by, the collecting officer; and if such tax shall be paid under protest the reasons therefor shall be specified, and the same procedure observed as is or may be required by the general tax law. All taxes levied under the provisions of this act, or of act number two hundred and sixty-nine of the session laws of eighteen hundred and eighty-

one, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid. § 4920.

The act referred to is the General Drain Law, being § § 4870-4975, C. L. of 1915.

1409. Return of Drain Taxes, Etc.—If the taxes levied for the construction, cleaning out, widening, deepening or extending of any drain are not collected by the township treasurer, they shall by him be returned, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect (naming in each case the particular drain), as lands are returned for State, county and township taxes, and such taxes shall follow such lands, the same as all such other taxes, and all the general provisions of law now existing, or that may be hereafter enacted for enforcing the payment of township, county and State taxes, shall apply to such drain taxes, and to the lands returned delinquent therefor, in the same manner and with like effect. § 4921.

1410. Disposition of Drain Taxes Collected.—Drain taxes, when collected, shall be returned to the county treasurer to be disbursed by him. The drain orders issued for each particular drain shall be received for drain taxes for benefits levied for the construction of such drain, by the township treasurer or county treasurer, as the case may be. § 4923.

1411. Drains Traversing More Than One County.—The taxes for such drains, when collected by the township treasurer, shall be paid over to the county treasurer of their respective counties to be disbursed by him on the joint order of the commissioners. § 4936.

Ditch orders are not general township charges and can be paid only out of the particular assessment on the credit of which they were drawn, and which constitutes a separate fund by itself.—Catchart v. Treas. of Merritt, 38 / 243.

1412. Injunctions.—After any taxes have been assessed for the construction, location or establishment of any drain, no injunction shall issue to restrain the spreading of the same upon the tax roll nor to restrain the collection thereof, nor shall the same be in any manner stayed, unless the amount of such assessment shall first be paid into the township treasury to be applied upon such tax, in case the court in which the suit upon which such injunction is tried shall so order. § 4924.

CHAPTER IV.

DUTIES OF TOWNSHIP TREASURER RELATING TO SCHOOL TAXES.

1413. To be Furnished Statement of All Taxes to be Collected.—The supervisor, on delivery of the warrant for the collection of taxes to the township treasurer, shall also deliver to said treasurer a written statement of the amount of school and library taxes, the amount raised for district purposes on the taxable property of each district in the township, the amount belonging to any new district on the division of the former district, and the names of all persons having judgments assessed under the provisions of this act upon the taxable property of any district, with the amount payable to such person on account thereof. § 5703. [See Form No. 71.]

1414. Statement and Payment of One-mill Tax.—The supervisor of each township, on the delivery of the warrant for the collection of taxes to the township treasurer, shall also deliver to said treasurer a written statement, certified by him, of the amount of the one-mill tax levied upon any property lying within the bounds of a fractional school district, a part of which is situate within his township, and the returns of which are made to the clerk of some other township; and the said township treasurer shall pay to the township treasurer of such other township the amount of the taxes so levied and certified to him for the use of such fractional school district. § 5704. [See Form No. 70.]

1415. Collection of Tax in Case of Division of District, Etc.—Whenever any portion of a school district shall be set off and annexed to any other district, or organized into a new one, after a tax for district purposes other than the payment of any debts of the district shall have been levied upon the taxable property thereof, but not collected, such tax shall be collected in the same manner, as if no part of such district had been set off, and the said former district, and the district to which the portion so set off may be annexed or the new district organized from such portion, shall each be entitled to such proportion of said tax as the amount of taxable property in each part thereof bears to the whole amount of taxable property on which such tax is levied. § 5705.

1416. Treasurer to Hold School Taxes and Notify the Township Clerk.—The township treasurer shall retain in his hands, out of the moneys collected by him, after deducting the amount of tax for township expenses, the full amount of the school taxes on the assessment roll, and hold the same subject to the warrant of the proper district officers, to the order of the school inspectors, or of the persons entitled thereto, and give a written notice to the township clerk of the amount. § 5706. [See Form No. 93.]

He can pay out school district moneys, only upon such orders as are prescribed by law. Payments made in any other manner will not relieve him from liability to the district for the money.—Burns v. Bender, 36 / 195. Such orders must be drawn in favor of the assessor only, and they can be paid to no other person.—District 9 v. District 5, Midland, 40 / 551.

Mandamus lies to compel a township treasurer to pay to relator (district assessor) so much of the money in his hands as is covered by the warrant of a school director drawn in relator's favor and in proper form, even though it does not specify a precise sum but is for all such money in his hands as was raised for the purposes of the school district and belonged thereto.—Bryant v. Moore, 50 / 225.

The custodian of public funds is bound to make payment on a proper warrant to the extent of the moneys lawfully in his hands and cannot refuse on the ground that his right to the custody of the remainder is disputed.—Id.

Mandamus to compel the payment of money may be granted so far as concerns a portion of the demand, while as to the rest the application is dismissed.—Id.

Where a town treasurer is called upon to pay warrants drawn in favor of an assessor whose right to the office is not questioned, the only purpose being to transfer the school money belonging to the district to the assessor's custody the treasurer assumes a serious responsibility in refusing payment on the ground that the moderator is not a legal officer, he having been recognized as such by the remaining district officers.—School District No. 8 v. Root, 61 / 374.

1417. To Apply for School Moneys, Etc., and Notify Township Clerk.—The township treasurer shall, from time to time, apply to the county treasurer for all school and library moneys belonging to his township, or the districts thereof; and on receipt of the moneys to be apportioned to the districts, he shall notify the township clerk of the amount to be apportioned. § 5707. [See Form No. 94.]

The superintendent of public instruction, in his apportionment of the primary school interest fund to a township containing four organized school districts, directed the payment of the sum apportioned to one of the four districts, under § § 5644-46, 5657. The county treasurer paid over the money to the treasurer of the township, but no apportionment was made by the town clerk. A warrant was drawn by the proper officers of the school district, in

favor of its assessor, upon the township treasurer for the amount apportioned, who refused payment, alleging as his reasons: 1. That the assessor was not a duly qualified officer, and 2. That no apportionment had been made by the township clerk of said fund to said district. Held, that the direction for the payment of the money to said district followed the same into the hands of the township treasurer, and that no other or further apportionment was necessary, or could be made by the township clerk, who was powerless to alter or modify the action of the superintendent of public instruction in the premises.—Moiles v. Watson, 60 / 415.

1418. To Apply for Money Due Fractional District, Etc.—Each treasurer of a township to the clerk of which the returns of any fractionel school district shall be made, shall apply to the treasurer of any other township in which any part of such fractional school district may be situated, for any money to which such district may be entitled; and the treasurer paying over the same shall take a receipt therefor in duplicate, one copy of which he shall file in his office, and the other copy he shall send by mail, or deliver personally, to the clerk of the township to the treasurer of which he had paid any moneys on account of a fractional school district, which shall be specified in the receipt; on receiving the duplicate receipt, the clerk shall charge the sum named therein to the township treasurer, and apportion the same as are other taxes for school purposes. § 5708.

1419. Treasurer to be Notified of Apportionment.—The county treasurer shall notify the township treasurer of school moneys apportioned to his township, and held subject to his order. See § 5711.

1420. Apportionment of Moneys Received from Certain Penalties.—All the money collected or received by any township treasurer under the provisions of either of the two last preceding sections (§ § 5755 and 5756), shall be apportioned and distributed to the school districts entitled thereto, in the same manner and in the same proportion that the moneys lost by any neglect or refusal therein mentioned would, according to the provisions of this act, have been apportioned and distributed. § 5757.

"This act," above referred to, is Act 164 of 1881, as amended, to revise and consolidate the law relating to public instruction and primary schools, being § § 5641-5761, C. L. of 1915.

1421. In Upper Peninsula, to Report Certain Moneys, Etc.—The treasurer of the township shall at any time, at the written request of the board of education, report to said board the amount of school money in his hands, and shall, on the order of the secretary of said board of education, countersigned by the president, pay to the treasurer of said board all or any of such money. § 5902.

CHAPTER V.

DUTIES OF TOWNSHIP TREASURER RELATING TO LOST GOODS AND STRAY ANIMALS, AND DAMAGES DONE BY DOGS.

1422. When Finder to Pay Treasurer One-Half the Value of Goods, Etc.—If no owner or person entitled to the possession of the same shall appear in one year, then such lost money or goods shall remain to the finder, he paying one-half of the value thereof to the treasurer of the township, according to appraisement made by a justice of the peace, after deducting from such value all the fees and charges aforesaid, to be determined and certified by a justice of the peace, and upon the neglect or refusal to pay the said half of the value, the same shall be recovered by the township treasurer, in an action of debt, or on the case. § 7452.

1423. Money from Sale of Stray Animal to be Deposited With Treasurer.—If the owner or person entitled to the possession of any stray beast shall not appear and make out his title thereto within six months, such animal shall be sold and the money arising from the sale shall be deposited in the treasury of the township. See Sec. 2118.

1424. When Treasurer to Pay Money to Owner.—If the owner or person entitled to the possession of any such animal, shall appear within one year after the entry with the township clerk and establish by his own affidavit, or otherwise, to the satisfaction of the township treasurer, his title thereto, he shall be entitled to receive the money so deposited in the township treasury, from the proceeds of the sale; and if no owner or person entitled to the possession of the same shall appear within the said year, such money shall belong to the township. § 7455.

1425. Payment of Orders for Damages Done by Dogs.—Upon receipt of such certificate of damage the said clerk shall issue an order for the amount specified in such certificate, payable to the person entitled to the same, which order shall be paid by the township or village treasurer upon presentation to him out of the special fund provided for in section 1319 of this Guide, provided there is sufficient money in such special fund. All such orders shall be good until fully paid and payment thereof shall be made according to the time of filing of such claim with the said clerk. All such claims shall be subject to the auditing rules of the several townships or villages. After all claims have been paid, and at the end of each calendar year, any surplus remaining in such special fund exceeding two hundred dollars shall revert to the general school fund of the township or village where such surplus was accumulated. Act 347 of 1917, Sec. 8.

The certificate referred to is that of a justice of the peace, after viewing livestock claimed to have been killed or wounded by any dog or dogs. See Section 1389 of this Guide.

CHAPTER VI.

MISCELLANEOUS PROVISIONS RELATING TO TOWNSHIP TREASURER.

1426. Surplus in Certain Attachment Cases to be Deposited With Treasurer.—If the defendant does not call for the surplus money within two months after rendition of judgment, it shall be the duty of the justice having charge of the same to deposit such surplus money in the treasury of the township in which such judgment was rendered, giving notice to the township clerk, whose duty it shall be to charge the same to the treasurer of the township. § 14319.

1427. Time in Which Defendant Can Claim Money.—If the defendant, his agent, or his legal representative, entitled to the possession of such money shall appear within six years after the rendition of such judgment, and establish by his own affidavit or otherwise, to the satisfaction of the township treasurer, his right thereto, then he shall be entitled to receive the money, and shall give his receipt therefor, and the township board, when settling with such treasurer, shall give him credit for said receipt. § 14320.

1428. Tonnage Tax on Steam Vessels.—The said state treasurer shall annually, on or before the first day of December, pay into the county treasury of any county wherein is located the port of hail of any steam

vessel, steam barge or steam boat complying with this act, all money so received from any steam vessel, steam barge or steam boat whose port of hail is within said county. The county treasurer of said county shall then pay to the city or township wherein is located the port of hail of said steam vessel, steam barge or steam boat such proportion of said money or tax as the amount of State and county tax paid by said city or township bears to the whole state and county tax in said county, as fixed and determined by the board of supervisors of said county at the annual meeting of said supervisors at which said board equalizes and apportions the amount of taxes that shall be paid by such city or township for state and county purposes, and the balance shall be retained by said county treasurer for state and county purposes, in proportion to the amounts said State and county are each entitled to under such apportionment by said board of supervisors. § 4250.

1429. Levy Upon Timber from Private Forest Reserve.—When any owner of a forest reservation provided for in this act shall desire to cut and harvest trees in said reservation, he shall notify the tax assessor of his district of his said intention, whereupon the said assessor shall before the cutting thereof, estimate the cash value of the timber on the stump so to be cut and harvested, and shall issue a license to cut and remove said timber, which license shall be in effect upon payment to the collector of taxes of the district of a fee of five per cent of such appraised valuation. The assessor shall notify the clerk and the tax collector of his district of the issuance of such license. If any such timber is cut or removed without payment of such license fee, it shall be the duty of the tax collector to levy upon such timber for collection of such license fee in the manner provided by law for collection of personal taxes. § 764.

1430. Fees Under "Itinerant Venders" Act.—Every itinerant vender intending to sell goods in any township, shall file his State license and an application for a local license with the treasurer of such township, and before selling, offering or exposing for sale any goods in such township shall pay to the treasurer thereof, for the use thereof as a further local license fee, for such sale in such municipality, a sum to be computed as provided in the next following section. A receipt for said local license fee when paid shall be endorsed by said treasurer on the back of such State license, which shall remain on file with such treasurer so long as such sale shall continue or such goods be kept, exposed or offered for sale in such municipality. Every application for a local license, shall be signed by the holder of the accompanying State license, and shall specify the kind and line of goods then in stock in such municipality, the name of the municipality from which said goods were last shipped, and the name of the municipality in which said goods were last exposed or offered for sale. Such local license fee shall be computed and collected in each municipality respectively in which said goods shall be successively offered or exposed for sale. § 6991.

1431. To Issue Local License.—The treasurer of any township, who shall receive an application in due form as provided in the last preceding section, accompanied by such applicant's State license, shall forthwith give notice thereof to the supervisor of such township. Such supervisor shall, as soon as practicable, examine the stock of goods described in such application, and compute and certify to such treasurer the

amount of such applicant's local license fee for such intended sale in such municipality, which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding tax levy of such municipality for all purposes, except for State and county purposes. The payment of said local license fee to said treasurer shall authorize such applicant, who has complied with all other requirements of law, to sell within the limits of said township, such goods, wares and merchandise as are described in his application, and for that purpose to carry in stock in said township, goods only of the kind or line specified in his application, and not to exceed in amount at any one time the valuation on which his local license fee for such municipality was computed, and to continue in force so long as such licensee shall in good faith continuously keep, offer and expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the first day of May next following the date of application. Any itinerant vender who, after applying or paying for a local license, shall increase his stock, kept, offered or exposed for sale, in the municipality for which such local license fee was paid, above the valuation on which such local license fee was computed, without first making seasonable written application to the treasurer of such municipality for a supplemental license for such excess of stock, shall be fined not less than twenty dollars nor more than fifty dollars, and for each day such excess of stock is kept, offered or exposed for sale, without payment of local license fee therefor, shall be fined not less than twenty nor more than fifty dollars, and forfeit his State license. Supplemental licenses shall be applied for and the fees thereof shall be computed, certified and collected in the manner provided for local license fees. § 6992.

1432. Township to Have Lien on Vender's Stock.—Every township in which is kept, exposed or offered for sale an itinerant vender's stock of goods shall have a lien on such goods for the amount due such municipality for local license fee on such stock, which may be enforced by suit, within ten days from the time when such goods were first publicly offered or exposed for sale in such municipality. Such suit may be brought in the name of such township, and may be begun by writ of attachment, provided some officer or agent of said municipality shall make and file an affidavit setting forth that such local license fee has not been paid, and that such goods have been publicly offered and exposed for sale in such municipality. When any person liable therefor neglects or refuses to pay the local license fee provided for in this act, the municipality in which such goods are offered and exposed for sale may maintain an action of assumpsit to recover the same, and such action may be begun by writ of attachment, which shall be issued upon the filing of the affidavit hereinabove provided for, and in such action a writ of garnishment may be issued to the secretary of state as hereinafter provided, upon the filing of an affidavit by any officer or agent of such municipality, stating that he has good reason to believe and does believe that the said secretary of state has in his hands or under his custody or control moneys belonging to the principal defendant, or that he is indebted to such principal defendant. It is made the duties of the treasurers of townships, to prosecute for violation of this act in their respective municipalities, and to report such violations promptly to the

assessing officers thereof in order that they may be enabled to compute and certify the local license aforesaid. § 6994.

This act requires the applicant to deposit with the secretary of state five hundred dollars, to be held sixty days after the expiration of the license, which sum is subject to attachment. The secretary of state is answerable as garnishee defendant.

1433. **Treasurer's Duties in Township School District.**—The provisions of law prescribing the duties of the township treasurer, in a township organized as a single school district, are compiled in Chap. II of Part X. See Secs. 961 to 984 of this Guide.

PART XV.

THE COMMISSIONER OF HIGHWAYS.

CHAPTER I.—General Provisions.
CHAPTER II.—Laying Out, Altering and Discontinuing Highways.
CHAPTER III.—Taxes for Highway Purposes.
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CHAPTER VI.—State Reward for Roads.
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CHAPTER IX.—Bridges.
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CHAPTER XXIV.—Other Statutes Relating to Highways.
CHAPTER XXV.—Statute Labor.

CHAPTER I.

GENERAL PROVISIONS OF LAW RELATING TO THE COMMISSIONER OF HIGHWAYS.

1434. Election, Eligibility, Term of Office, Etc.—The provisions of law relating to the election, eligibility, oath and term of office of the commissioner of highways, have been compiled in Parts II and III, devoted to Township Meetings and Township Officers, respectively.

1435. Bond of Commissioner.—Each commissioner of highways, before entering upon the duties of his office, and within the time limited by law for filing his official oath, shall give bonds, with one or more sufficient sureties, to the township, in the penal sum of one thousand dollars, to be approved by the supervisor or township clerk, conditioned for the faithful performance of the duties of his office, and the faithful disbursement of all moneys that may come into his hands by virtue of his office. Act 283 of 1909, Chap. XII, Sec. 1. § 4471. [See Form No. 95.]

DUTIES AND POWERS: High. Com'rs v. Martin, 4 / 560. Where a highway commissioner entered upon the duties of his office without giving bonds, and issued an otherwise lawful order in payment of labor, it was held binding upon the township.—Mackenzie v. Baraga Twp., 39 / 556.

1436. May Require Bond of Overseers.—The commissioner may require any one or all of the overseers of highways of his township, before

entering upon the duties of their office, to give bond with one or more sufficient sureties in such sum as he may require and to be approved by him, conditioned for the faithful performance of the duties of their office, and the faithful disbursement of all moneys that may come into their hands by virtue of their office. The bonds mentioned in this section shall be filed with the township clerk, who shall safely keep the same in his office. Id., Chap. XII, Sec. I. § 4471. [See Form No. 95.]

1437. Commissioner to Appoint Overseers to Fill Vacancy.—If any person chosen to the office of overseer shall refuse to serve, or if his office shall become vacant, the commissioner shall, by warrant under his hand, appoint some other person in his stead; and the overseer so appointed or designated shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at township meetings. The commissioner making such appointment or designation shall cause such warrant to be filed in the office of the township clerk, who shall forthwith give notice thereof to the person so appointed or designated, who shall give written notice of his acceptance to such clerk within ten days after receiving such notice. Id., Chap. XII, Sec. 2. § 4472. [See Form No. 120.]

1438. Filling of Vacancy in Office of Commissioner.—Whenever a vacancy shall occur in the office of commissioner of highways, it shall be filled by appointment of the township board and the person so appointed shall hold office for the remainder of the unexpired term. Act 203 of 1917, Chap. IV, Sec. 6. See also Secs. 265, 266 and 267 of this Guide.

1439. Declared to be Officer of Township.—Highway commissioners and other officers having special charge of highways, streets, bridges, sidewalks, cross-walks and culverts, and the care of repairing thereof, are declared to be officers of the township and shall be subject to the general direction of the township authorities in the discharge of their duties. See Sec. 1740 of this Guide.

1440. Expenditure Over $50 and Not Exceeding $500.—In all cases involving an expenditure of an amount over fifty dollars and not exceeding five hundred dollars, in the repairing or construction of roads or bridges in any township of this State, the commissioner shall submit the proposed expenditure to the township board, and, upon the approval of the said board, the commissioner may make such repairs or cause them to be made; may do the construction work or cause it to be done; may buy the necessary materials and hire the necessary help. Act 283 of 1909, Chap. XII, Sec. 3. § 4473.

1441.—When Proposed Expenditure is Over $500.—But if the proposed expenditure is of an amount greater than five hundred dollars, the commissioner shall first submit the same to the township board, and upon approval of the said board, the commissioner shall advertise for sealed proposals for the doing of such work and the making of such repairs, and together with the township clerk, subject to approval of the township board, shall contract with the lowest bidder giving good and sufficient security for the performance of the work: Provided, That in case it shall appear to the commissioner and board acting together, in such manner that it seems to them clearly shown, that there has been collusion among the bidders, they may contract privately with any one of the bidders or with some one who was not a bidder, but at a price not to

exceed that of the lowest bidder. The contract so made shall be approved in writing by the supervisor in order to be valid as against the township. Not less than ten days' notice shall be given by the commissioner of the time and place of letting such contract by putting up notices in at least five of the most public places in his township. Upon performance of the work by the contractor, if approved and accepted by the commissioner and supervisor, there shall be drawn and signed by such commissioner, and countersigned by the township clerk, orders upon the township treasurer for the amount of said contract. It shall be unlawful for any township officer to be in any way interested directly or indirectly in any such contract. Any contract in which any such township officer is so interested shall be absolutely void: Provided, however, That in case the township board shall decide to do the work by day labor, the plans and specifications together with all bids received thereon, and the reason in writing, for not letting the job by contract, shall be filed in the office of the township clerk: Provided further, That if a bridge is to be repaired or built at a cost greater than five hundred dollars, the township board or highway commissioner may apply to the state highway commissioner who shall assign a competent civil engineer to prepare plans and specifications for the same, or decide as to the merits of the various plans on which tenders may have been received before the contract is let, and pass upon the completed structure before the contractor for the same shall be paid. Id. § 4473.

LETTING CONTRACTS: The security should be proposed and tendered in connection with the bid and at the same time, so that the acceptance of bids and the closing up of the contract can be accomplished at once, and if any delay is necessary it should be by adjournment. Where without any adjournment, there was a delay of several days after the bidding, to allow the accepted bidder to procure sureties, and then, upon his failure to make the contract, the work was let to the next lowest bidder, the proceeding was held irregular.—People v. Baraga Twp., 39 / 556. The commissioner has no right to contract without bids for work which the statute requires to be let only on sealed proposals.—Beard v. Burdell Twp., 58 / 245. See Mackey v. Columbus Twp., 71 / 227

1442. Contracts for Labor and Materials; Highway Orders.—Upon the performance of contracts for labor, or for the furnishing of materials according to the provisions of this act, the commissioner of highways shall make payment therefor by orders upon the township treasurer, which orders shall be signed by such commissioner and countersigned by the township clerk, and no money applicable to any such purpose shall be paid by such treasurer excepting upon such orders, accompanied by the certificate of such commissioner, that the labor has been actually performed, or the contract fulfilled, or materials furnished for the payment of which such order was drawn; and such commissioner shall not draw, nor shall any clerk countersign, any order in excess of the funds at the time belonging in the treasury, applicable to the payment of the same, or that may have been voted for the purpose, nor shall any such commissioner make any contract, or issue any evidence of indebtedness or do any other act implying any obligation upon his township except as expressly authorized by statute; but if any contract entered into with such commissioner, within the scope of his authority, by any person acting in good faith for the performance of labor or the furnishing of materials to such township shall have been in whole or in part in good faith performed without actual or constructive notice or knowledge of any illegality or irregularity in such contract, and the benefit thereof shall have been received by such township, and the same be a benefit for which such township might, through such commissioner, have lawfully contracted and

paid and may lawfully make use of, such township shall, notwithstanding technical irregularities in such contract, or the proceedings antecedent thereto, or violations of the provisions of this act by such commissioner, be liable the same as a natural person, to pay for such benefits to the person entitled thereto; but the amount to be paid shall in no case exceed the stipulated contract price nor the value to the township of the benefit received. And the commissioner of highways and the sureties on his official bond shall be jointly and severally liable to the township for the entire cost of litigation and damage to the township resulting from the illegal acts of such commissioner, including all reasonable fees and expenses of officers and counsel in connection with any suit or proceeding growing out of or in any way induced by such illegal acts, and the payment of such damages shall not relieve such commissioner from any criminal liability depending on his illegal acts; and any township officer violating any provisions of this section shall forfeit to the township in addition to the above mentioned liabilities the sum of one hundred dollars for each offense. Id., Chap. XII, Sec. 4. § 4474. [See Form No. 96.]

COMMISSIONER'S ORDERS: Manner of drawing orders.—Monroe v. Rowlnad Twp., 1/318. The order is incomplete without a certificate that the labor is performed.—Just v. Wise Twp., 42 / 573. The township clerk has no authority by virtue of his office to sign the names of highway commissioners to an order on a township treasurer.—Id. Highway commissioners can only act when authorized; there is no general presumption that they can bind their township by obligations which they may see fit to issue.—Hosier v. Higgins Twp. Bd., 45 / 340. Payment of commissioner's orders may be compelled by mandamus.—Just v. Wise Twp., 42 / 572; McArthur v. Duncan Twp., 34 / 27; Stoddard v. Giasson, 120 / 91. See Sections 1271 and 1272 relative to the payment of highway commissioner's orders and Sections 1443-44 to prevent the issue of unauthorized orders. Other cases cited, see Taymouth v. Koehler, 35 / 22; McKenzie v. Baraga Twp., 39 / 554; High. Com'rs v. VanDusan, 40 / 429; Avery v. Krakow Twp., 73 / 626.

This statute has always required that the order shall be accompanied by a certificate that the labor has been performed or the material furnished. Later, that part was incorporated making the township liable for contracts of the commissioner, within the scope of his authority, notwithstanding technical irregularities, etc., and also making commissioners and their bondsmen liable for illegal acts. But where the commissioners drew orders on the township treasurer, payable out of any moneys in the treasury belonging to the road district, these orders were not paid, and a mandamus was applied for to compel the township board to levy a tax on the township for their payment; there being nothing in the case to show that the township had had the benefit of the district fund, by misappropriation or otherwise, the mandamus was denied.—People v. Zilwaukee Twp. Bd., 10 / 274.

See also Sections 1443 and 1444 of this Guide.

WAYNE COUNTY: Act 357 of 1913 (§ 4748) provides that in any township in the State of Michigan lying in a county containing a population of three hundred and fifty thousand or over (Wayne county only), all claims for labor, materials purchased or incidental expenses contracted by highway commissioners of said townships shall be presented to the township board for audit and allowance, and when allowed, shall be paid in the same manner as other claims against townships, by warrant or order drawn on the township treasurer and signed by the township clerk and supervisor.

COLLECTION OF HIGHWAY ORDERS: See Sections 1271 and 1272 of this Guide.

1443. Commissioner Not to Issue Orders in Excess of Funds Voted.—Hereafter it shall be unlawful for any highway commissioner to draw or issue any order or orders for the payment of money upon the township treasurer of any township, or to contract for, or to permit to be done or furnished any labor or materials upon or for the highways or bridges in such township, for any sum or sums greater than the highway funds thertofore authorized by the votes of such township, or otherwise provided by law, except in cases especially provided by existing laws. Id., Chap. XVIII, Sec. 3. § 4558.

In payment for tools and machinery purchased, neither highway commissioner nor township board may lawfully issue a warrant calling for the future payment of money and interest thereon, unless authorized by a vote of the electors of the corporation.—Power v. Gray, 186 / 646.

1444. Penalty for Issuing Unauthorized Order.—Any highway commissioner offending against the provisions of the preceding section shall

be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment in the county jail of the proper county, not exceeding three months, in the discretion of the court. Id., Chap. XVIII, Sec. 4. § 4559.

1445. Commissioner to Erect Guide-Posts.—The commissioner shall cause guide-posts, with proper inscriptions and devices thereon, to be erected and kept in repair on all important road crossings on roads leading into cities and villages at distances from three to five miles out from such cities and villages, and at the intersection of all such roads in his township as he may deem necessary. Id., Chap. XII, Sec. 5. § 4475.

1446. Removal of Loose Stones and Repair of Roadbed.—Once in every month from the first of April to the first day of December the highway commissioner shall cause all the loose stones too large to bond with the roadbed, lying on the beaten track of every road within his township to be removed; no commissioner shall cause the roadbed of any highway to be plowed up, nor cause any clay, earth or other substance except gravel, crushed stone, iron ore, coal cinders, broken drain tile or sewer pipe to be placed upon the roadbed of any highway later than October first, nor shall the commissioner of highways cause any clay, earth or other substances, except gravel, crushed stone, iron ore or coal cinders to be placed upon a gravel or stone road at any time after such road has been permanently improved according to the provisions of this act. Any commissioner of highways or other person violating the provisions of this section relative to the plowing up of roadbeds, or the placing of clay, earth or other substance, except gravel, crushed stone, iron ore or coal cinders upon the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not less than twenty-five dollars and not exceeding one hundred dollars, or imprisonment in the county jail not less than thirty days or exceeding ninety days, or both such fine and imprisonment at the discretion of the court. Any commissioner who shall refuse or neglect to perform the duties required by this section shall be liable to a penalty of twenty-five dollars: Provided, That the provisions of this section shall not prohibit or abridge the construction of new roads or the repairing of roadbeds by highway commissioners at any time when the same may be washed out, nor shall the same in anywise prohibit the improvement or repairing of sand roadbeds at any time by commissioners of highways in such manner as they shall deem best: Provided further, That the provisions of this act shall not prohibit or abridge the construction of new roads or repairing of roadbeds by county road commissioners in such counties as have or shall hereafter adopt the county road system. Id., Chap. XII, Sec. 6. § 4476.

1447. Clerk.—The township clerk shall be the clerk of the commissioner of highways, and record his proceedings. See Sec. 1270 of this Guide.

The clerk by virtue of his office has no authority to sign the commissioner's name to orders on the township treasurer.—Just v. Twp. of Wise, 42 / 573. Mandamus will lie to compel township clerk to countersign highway commissioner's orders.—Stoddard v. Giasson, 120 / 91.

1448. May Administer Oaths and Examine Witnesses.—The commissioner shall have power to administer all oaths required in any pro-

ceeding before him, or in which he is called to act officially, and on application for laying out, altering, or discontinuing highways, and in proceedings to lay out private roads he may examine witnesses on oath as to any matter touching such application, and may issue subpoenas and compel the attendance of witnesses on the hearing thereof, but he shall charge no fees therefor. Act 283 of 1909, Chap. XIII, Sec. 2. § 4478.

1449. Fees for Services Rendered at Request of Commissioner.—The just fees and charges of all justices of the peace, sheriffs, constables, and other officers who may render any service for or at the request of any commissioner of highways under the provisions of this act, shall be allowed by the township board and paid by the township, and it is hereby made the duty of such officers to render any service required of them under the provisions of this act, and when such service is required by a commissioner of highways, it shall not be necessary to pay or tender to such officers their fees for such service. Id., Chap. XIII, Sec. 3. § 4479.

1450. Compensation of Commissioner of Highways.—The commissioner shall be entitled to the same per diem compensation for any services required of him by this act as is provided by law, which shall be audited and allowed by the township board and paid in the same manner as other township expenses. Id., Ch. XIII, Sec. 4. § 4480.

The compensation of the commissioner, provided by law, is three dollars per day and at the same rate for parts of days. See Section 282 of this Guide.

1451. Words "Commissioner" and "Overseer" Construed.—The word "commissioner," wherever used in this act, except some special commissioner be mentioned, shall be construed to mean the commissioner of highways elected in and for each township, and wherever the word "overseer" is used it shall be construed to mean the overseer of highways elected or appointed over and for each road district, and no exception shall be taken to the language of this act if in any place it fail to set forth specifically the intent and meaning herein defined. Id., Chap. XIII, Sec. 10. § 4486.

1452. Commissioner May Bring Action for Injury to Tools, Etc.—Each overseer of highways shall be personally responsible for the proper use and care of such tools and machines while in his charge, or in use in his road district, and any overseer or other person who shall through negligence or otherwise wilfully injure or damage such tool or machine shall be liable for such damage in an action of trespass on the case to be brought by said commissioner before any justice of the peace in said township or any adjoining townships. Id., Chap. XIII, Sec. 11. § 4487.

1453. Commissioner to Provide Place for Storing Tools.—It shall be the duty of the commissioner of highways of each township to provide a suitable place for the storage and proper housing of all tools, implements and machinery that are owned by the township, and to cause such tools and implements to be stored and housed therein at all times when not in use. Id., Chap. XIII, Sec. 12. § 4488.

1454. Penalty for Removing or Injuring Tools.—Any person who shall break into any such place of storage as above provided, or remove or take away without the consent of the commissioner of highways, or the consent of the overseer of highways or injure any such tools of [or] machinery, shall be deemed guilty of a misdemeanor, and may be punished therefor

by a fine not exceeding one hundred dollars or by imprisonment for not more than ninety days, or both such fine and imprisonment, in the discretion of the court. Id., Chap. XIII, Sec. 13. § 4489.

1455. Gravel for Use on Highways.—The commissioner of highways shall have power to purchase land suitable for obtaining gravel for the use of the highways of his township. If he be able to agree with the owner thereof, he may purchase the same and pay therefor out of the general highway fund of the township, upon the approval of the township board. Whenever said highway commissioner shall be unable to agree with any owner of any parcel of such land which the said commissioner desires to purchase for graveling purposes, as to compensation to be paid therefor, the highway commissioner shall give notice in writing to the owner or occupant of the land, on which may be located such gravel desired for the use of the improvement of the highways of the township of his intention to condemn such land for such purposes, and all subsequent proceedings for the condemnation of such lands shall be in accordance with the provisions of chapter nine of this act in relation to the opening of private roads, insofar as the same is applicable. Id., Chap. XIII, Sec. 15. § 4491.

1456. Powers and Duties of Commissioner of Highways.—The provisions of law prescribing the powers and duties of the commissioner of highways relative to highways, bridges, culverts, drains, etc., are compiled in the following chapters of this part. See, also, Secs. 780 and 781 of this Guide.

1457. Fires in Woods or Prairies.—For duty of the commissioner of highways in cases when fires in woods or prairies endanger other property, see Sec. 1896 of this Guide. [See Form No. 73.]

1458. Fence Viewers.—The overseers of highways, and the highway commissioners of the several townships in this State shall be fence viewers in their respective townships: Provided, That if in any case there shall not be at least two disinterested fence viewers, either of the two justices of the peace not members of the township board, or both if necessary, shall act as fence viewers whenever required. Act 283 of 1909, Chap. XXIII, Sec. 8. § 4599.

1459. Compensation of Fence Viewers.—Each fence viewer shall be paid by the person employing him at the rate of two dollars a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover in an action of assumpsit double the amount of such fees. Id., Chap. XXIII, Sec. 9. § 4600.

CHAPTER II.

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS. CONSTITUTIONAL PROVISIONS.

1460.—Powers of Legislature.—The legislature may by general law provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by the State and by the counties and townships thereof and by road districts; and may authorize counties or districts to take charge and control of any highway within their limits

for such purposes. The legislature may also by general law prescribe the powers and duties of boards of supervisors in relation to highways, bridges and culverts; may provide for county and district road commissioners to be appointed or elected, with such powers and duties as may be prescribed by law; and may change and abolish the powers and duties of township commissioners and overseers of highways. The legislature may provide by law for submitting the question of adopting the county road system to the electors of the counties, and such road system shall not go into operation in any county until approved by a majority of the electors thereof voting thereon. The tax raised for road purposes by counties shall not exceed in any one year five dollars upon each one thousand dollars of assessed valuation for the preceding year. Const. VIII, 26.

1461. Consent of Authorities Required to Permit Use of Highways by Public Utility.—No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such city, village or township; nor to transact a local business therein without first obtaining a franchise therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships. Const. VIII, Sec. 28.

1462. Taking of Private Property.—When private property is taken for the use or benefit of the public, the necessity for using such property and the just compensation to be made therefor, except when to be made by the State, shall be ascertained by a jury of twelve freeholders residing in the vicinity of such property, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law: Provided, That the foregoing provision shall not be construed to apply to the action of commissioners of highways or road commissioners in the official discharge of their duties. Const. XIII, Sec. 2.

GENERAL STATUTORY PROVISIONS.

1463. Authority for Building, Etc., Highways, Bridges, Culverts, Drains, Etc.—Public highways and private roads may be established, opened, improved and maintained within this State under the provisions of this act, and the counties, townships, cities, villages and districts of this State shall possess the authority herein prescribed for the building, repairing and preservation of bridges and culverts; the draining of highways, cutting of weeds and brush in the improvement of highways and the duties of state, county, township, city, village and district highway officials shall be as defined in this act. Act 283 of 1909, Sec. 1. § 4287.

HIGHWAYS: Ways must be either public or private; there is no intermediate species of way for any purpose of passage.—Tillman v. People, 12 / 401. A highway is a public passage for all.—People v. Beaubien, 2 Doug. 285. It is a way over which all the people of the State have a common and an equal right to travel, and which they have a common or at least a general, interest to keep unobstructed.—People v. Jackson, 7 / 446. A street is made for the passage of persons and property, and the law cannot define what exclusive means of transportation and passage shall be used.—Macomber v. Nichols, 34 / 219. The rights of travelers on a public highway are mutual and co-ordinate.—Pigott v. Engle, 60 / 228. We have no instance, in our local institutions, of the laying out of ways, except by the persons chosen in the community that is burdened, either alone or as representing them in the county or state.—Drain Com'r v. Baxter, 57 / 131.

The rights of travelers on a highway are mutual and co-ordinate. It is the duty of each

to so use his right of passage as not to cause injury or detriment to another having a like right.—Pigott v. Engle, 60 / 228.

The fee in the highway is in the abutting owner, subject only to the easement of the public to use it for the purpose of a highway.—People v. Foss, 80 / 564; Graham v. City of Detroit, 174 / 542.

Public highways are under legislative control. They are for the use of the public in general for passage and traffic, without distinction. The restrictions upon their use are only such as are calculated to secure to the general public the largest practicable benefit for the enjoyment of the easement.—People v. Eaton, 100 / 211.

A cul de sac may be a public highway.—Fields v. Commissioner, 102 / 454; Rogren v. Corwin, 181 / 56.

A turnpike road becomes a public highway on forfeiture of franchise.—Highway Commissioner v. Cobb, 104 / 395.

Subject to the Constitution and the property rights of abutting owners, the legislature has paramount authority over all public ways.—Scovel v. Detroit, 146 / 95.

A highway not within an incorporated village or city cannot be laid out over navigable waters. A highway is not a wharf or landing place.—Highway Commissioner v. Ludwick, 151 / 500.

A highway is a way or thoroughfare open to all, a way over which the public at large have a right of passage; the name being derived from alta via, or king's highway, meaning a thoroughfare opened and maintained by the highest authority common to all, for the free use of the sovereign and all his subjects.—Burdick v. Harbor Springs Lumber Co., 167 / 679.

A road to which the public can gain access and use for practical purposes only by trespassing upon private property, cannot well be considered a public highway.—Ayres v. Richards, 41 / 681.

A municipality in its control of highways acts for the State.—Graham v. City of Detroit, 174 / 543.

1464. Ferry Landings Deemed Public Highways.—Ferry landings shall be deemed public highways, and may be laid out, constructed, maintained, altered, or discontinued in the same manner, and shall in all respects be subject to the same regulations, so far as they may be applicable, as other public highways and bridges; and any public highways along the border of, or terminating upon the waters of any stream, river, or other body of water across which a ferry is licensed, may be used as a landing for such ferry, subject to such rules and regulations as the authorities having control over highways may establish and such use shall be deemed a proper use thereof as a highway. Id., Chap. XIII, Sec. 14. § 4490.

1465. Width of Highways and by Whom Laid Out, Altered or Discontinued.—Public highways shall not be less than four rods in width, except when laid out and established in the manner hereinafter prescribed, and they may be laid out, altered or discontinued under the provisions of this chapter:

First, By the commissioner of highways of any township, within his township, upon the written application of seven or more freeholders of such township;

Second, By the joint action of the commissioners of highways of adjoining townships, on the line between such townships, on the written application of seven or more freeholders of each township, addressed to the commissioner of either township;

Third, By the concurrent action of the commissioner of highways of any township and the municipal authority of any adjoining city or village having, by law, jurisdiction in laying out streets or highways, on the line between such township and such city or village, on the written application of seven or more freeholders of each township, city or village;

Fourth, Commissioners of highways shall also have power to lay out and establish highways on section lines, through uninclosed and unimproved lands, without the application required by the first subdivision of this section. Act 283 of 1909, Chap. I, Sec. 1. § 4288. [See Forms Nos. 97 and 98.]

APPLICATION: An application by freeholders of the township is a condition precedent to laying out a highway.—People v. Township Board, 3 / 121; Roberts v. Highway Commissioners, 25 / 23. And the application must state that the applicants are freeholders of the

township.—Wilson v. Township Board, 87 / 240. Public highways can be established in two ways only under the statutes of this state: (1) by proceedings instituted by the commissioners, 25 / 23. And the application must state that the applicants are freeholders of the user.—Brown v. Twp. of Byron, 189 / 584.

DISCONTINUING: Highway commissioners have authority to discontinue such roads as come within the exercise of their official duty without the intervention of a jury, but not state or territorial roads.—Goldsmith v. Highway Commissioner, 15 / 347. A highway may be vacated by non-user (see Section 23), and where a highway is vacated conditionally, it is not re-established by the suspension of the conditional occupation.—Cooper v. Detroit, 42 / 584. Discontinuing highways by non-user and establishing highways and town line roads by user. See Section 30 and notes.

TOWNSHIP LINE ROAD: Proceedings for laying out a township line road must be taken jointly by the highway commissioners, and such action by one commissioner is void.—Brewer v. Gerow, 83 / 250. See Section 11.

FOUR RODS: This is not a limitation as to width, and does not operate to restrict to such width.—Brown v. Twp. Board, 109 / 557. The use by the public of a portion of a strip of land claimed to be a public way does not of necessity, either in city or county, determine the public right to extend over four rods in width.—Detroit City v. Myers, 152 / 666.

RIGHTS OF ABUTTING OWNER: A township, in constructing an embankment for a highway, has no right to so construct it as to cause the deposit of earth in a pond of a land owner or upon his land.—Schneider v. Brown Twp., 142 / 46.

1466. Application for Laying Out or Altering Highway.—In applications for laying out or altering a highway, the route along which the road is proposed to be laid, or the extent to which its route is proposed to be changed, shall be described in general terms, and where the application is for the alteration or discontinuance of a road, such road may be described by any name by which it is known, and if the discontinuance of only a portion of any road is asked for, such portion shall be specified. Id., Chap. I, Sec. 2. § 4289. [See Forms Nos. 97 and 98.]

LAYING OUT AND DISCONTINUING: Proceedings to open one highway and discontinue another cannot be combined; only one proceeding can be taken at a time, and every road must be opened or closed on its own merits.—Shue v. Highway Commissioner, 41 / 638. Void proceedings by commissioners discontinuing a highway are not a bar to regular ones taken to widen it to the statutory width; which latter action is not premature by reason of the pendency of certiorari proceedings. In which the invalidity of such discontinuance proceedings is established.—Weber v. Stagray, 75 / 32. Highway commissioners and township boards have no authority to act for the mere purpose of settling boundaries, and cannot properly disturb any possession with that object. The location of a highway according to the original survey is generally of no consequence where abutting owners have held continued occupancy for twenty-five years.—Shue v. Highway Commissioner, 41 / 638.

1467. Commissioner Shall Serve Notice of Application.—In case of an application under the first subdivision of section one of this chapter, the commissioner shall, within five days after receiving the same, issue a written notice, stating the object of such application, and appointing a time and place of hearing, which notice shall be served by the commissioner or by some other competent person, on the owners or occupants of lands through or adjoining which it is proposed to lay out, alter or discontinue such road, either personally or by a copy left at the residence of each owner or occupant, at least ten days before the time of hearing; and if no person shall reside upon any such lands, and the owner thereof shall not reside in the county in which said lands are situated, such notice to owners of such non-resident land shall be served by posting up the same in three public places in the township ten days before the time of hearing. Notice shall be served upon railroad companies by leaving a copy thereof with the agent in charge of any ticket or freight office of the company operating such railroad on the line thereof. Id., Chap. I, Sec. 3. § 4290. [See Form No. 99.]

PUBLICATION AND SERVICE OF NOTICE: A delay of over a month after receiving the application is fatal to the proceedings.—Sharpshooters Ass'n v. High. Com'r, 34 / 36. Where the notice sufficiently states the starting point and width, the use of the words "varying so far as is necessary to find suitable grounds for making a good and substantial road" will not vitiate the legality of the highway so far as it actually follows the survey lines.—Shepherd v. Gates, 50 / 495. Service on the attorney of a railroad company is not authorized by statute.—D. M. & T. R. R. Co. v. Detroit, 49 / 47. Service on freight agent.—Truax v. Sterling, 74 / 180. The return of service should show upon what particular persons the notice was served,

and whether served personally or by copy left at residence; also should show the particular places where the notices were posted.—People v. Highway Commissioners, 14 / 528. Sufficiency of notice.—Weber v. Stagray, 75 / 32. Where all the land to be taken belonged to persons residing on the property, and notice was personally served on appellant, it was unnecessary to post the notices required by this section; and the return to the writ of certiorari containing a proof of personal service within the proper time, complies with the requirement of the statute.—Gorham v. Johnson, 157 / 433.

WHO ENTITLED TO NOTICE: All owners and occupants through whose lands the highway is proposed to be laid out are entitled to the statutory notice.—Names v. Highway Commissioner, 30 / 491; Sherman v. Peterson, 91 / 480. Failure to serve notice upon the occupant, a tenant of the owner of a life estate is fatal to the proceedings.—Welch v. Hodge, 94 / 493. The owners of a parcel of land not fronting upon any highway, and whose only outlet is a private way two rods wide, belonging to him, and extending therefrom to a public highway, is entitled to notice of proceedings to discontinue such highway, as much as if his whole parcel abutted upon it.—Phillips v. Highway Commissioner, 35 / 15. And where discontinuance directly affects the convenience of access or leaves the way to a land owner's house a cul de sac he is directly interested in the proceedings and entitled to notice.—Goss v. Highway Commissioners, 63 / 608; Bauman v. Detroit, 58 / 444; Kimball v. Homan, 74 / 703. An occupant of land traversed by a highway with reference to which his houses, wells, barns and orchards have been located, must have notice of proposed discontinuance of said highway.—Curry v. Place, 99 / 525. Where land has been occupied and held adversely for eighteen years by one claiming to be the owner, it is not necessary to serve notice on others claiming an interest.—Nedow v. Porter, 122 / 456. A party who is not notified of highway proceedings can lose nothing by a failure to appeal to the township board.—Names v. Highway Commissioner, 30 / 491. Where a party appears without notice and proceeds without objection, want of notice is waived.—Sharpshooters Association v. Highway Commissioners, 34 / 36. Notice to life tenant of land.—Hatt v. Twp. Board, 144 / 266.

TEN DAYS' NOTICE: All persons entitled to notice of the meeting to determine the necessity of laying out, altering or discontinuing a highway must have ten full days' notice.—Saller v. Township Board, 67 / 422; Price v. Stagray, 68 / 17; Dixon v. Highway Commissioner, 75 / 225; Coquard v. Boehmer, 81 / 445; Cox v. Highway Commissioner, 83 / 193. And this excludes the day of service and the day of hearing.—Platt v. Highway Commissioners, 38 / 247.

PROOF OF NOTICE: Proceedings to lay out, alter or discontinue a highway will not be sustained unless the highway commissioner's report and the records show that the statutory notice of the proceedings was given.—Van Auken v. Highway Commissioners, 27 / 414; Moetter v. Highway Commissioners, 39 / 726; Gray v. Highway Commissioners, 40 / 165; Nelsen v. Wakefield, 43 / 435; Blodgett v. Whaley, 47 / 469; Goss v. Highway Commissioner, 63 / 608.

A written statement by one of the commissioners without date, of the service of notice on owners and occupants, which contains no description of the notice, or any date in regard to the time of service, is not sufficient proof of service of notice. There should be sworn evidence in writing of the service made and filed with the board.—Sharpshooters Association v. Highway Commissioners, 34 / 37. The recital in the determination of the board that the statutory notice was given is not sufficient; proof is not established from such recital.—Dupont v. Highway Commissioners, 28 / 362. Posting in a public place.—Anderson v. LaGrange Township, 2 / 187.

ALTERING: There is nothing in the present law of this state forbidding the alteration of a highway on account of its long continued use.—Weber v. Ryers, 82 / 117.

PLACE OF HEARING: The failure of a highway commissioner to meet at the place appointed in his notice to land owners, to view the premises and ascertain and determine the necessity of laying out a highway, ousts him of jurisdiction.—Barlow v. Highway Commissioner, 39 / 726.

As to discontinuance of state roads, see Section 1714 of this Guide.

1468. Affidavit of Service of Notice.—Upon the service of the notice required by the last preceding section, and before any further proceedings shall be had, the commissioner, or other person by whom the service was made, shall make and annex to such notice, or a copy thereof, an affidavit stating the time and manner of service, whether personally or by posting, or both, and if upon a railroad company, the fact of such service and upon whom, and such notice and affidavit shall be attached to the application, and the whole shall be present with the commissioner at the time of hearing upon the application. Id., Chap. I, Sec. 4. § 4291. [See Form No. 100.]

AFFIDAVIT: The affidavit of service of notice by the highway commissioner of the time and place for determining the necessity of laying out a highway is in the nature of a legal process, and must show that the commissioner obtained jurisdiction to proceed to the hearing.—Dupont v. Com'r, 28 / 362; Names v. Com'rs, 30 / 490; Ass'n v. Com'rs, 34 / 36; Truax v. Sterling, 74 / 160. Being the legal evidence that notice has been given, it is indispensable and must be in due form. It should name the persons served with notice, and whether served personally or by copy; and if served by posting, the places where posted should be stated.—People v. Highway Com'rs, 14 / 528. Proof of service is a condition precedent to the further action of the commissioners.—Van Auken v. Highway Com'rs, 27 / 414; Goss v. Highway Com'rs, 63 / 609. And filing an affidavit of such service two days after making the order is invalid.—Goss v. Highway Com'rs, 63 / 608. See citations under Section 7.

1469. Commissioner Shall Determine Necessity, Appraise Damages, Etc.—The commissioner shall, at the time appointed, proceed to view the premises described in the application and notice, and to ascertain and determine the necessity for laying out, altering, or discontinuing a highway pursuant to such application, and to appraise the damage on account thereof, if any is claimed, and he may in his discretion adjourn the hearing from time to time, not to exceed twenty days: Provided, That in case a highway shall be laid out parallel to and within one-half mile of any already existing highway, the damages upon any lands taken therefor shall not be estimated at less than the value of such land unless by the assent of the owner of such lands: Provided further, That the highway commissioner shall not appropriate a sum of money to exceed one hundred dollars in laying out or improving any highway, or in building or repairing any bridge, without the concurrence, by resolution, of the township board of the township in which such tax is levied. Id., Chap. I, Sec. 5. § 4292.

TAKING PRIVATE PROPERTY: Taking lands of a citizen for a public highway is taking property for the use and benefit of the public within the meaning of Art. 13, Sec. 2, Constitution.—People v. Kimball, 4 / 95; Truax v. Sterling, 74 / 160. The term "taking" should not be used in an unreasonable or narrow sense, but should include cases where the value of property is destroyed or injured, or where the owner is excluded from its enjoyment or from any of its appurtenances.—Pearsall v. Supervisors, 74 / 559. And if the public take any action which becomes necessary to subserve public use and valuable rights of individuals are thereby interfered with and damaged or destroyed, he is entitled to the compensation which the constitution gives therefor, and such damage or destruction must be regarded as a taking. —Id. The necessity for taking must be found to exist.—Grand Rapids v. G. R. & I. Ry. Co., 58 / 641; and the return must distinctly state such finding.—Truax v. Sterling, 74 / 160. But it is not essential that the highway should be indispensable or imperative to the public. —Rogren v. Corwin, 181 / 53.

DAMAGES: The adequacy of the compensation awarded by a highway commissioner for land taken for highway purposes is reviewable only by an appeal to the township board.—Weber v. Ryers, 82 / 177. See also, Weber v. Stagray, 75 / 36; Brown v. Twp. Board, 109 / 557. A township is not liable for interest on damages appraised for laying out a highway.—Anderson v. Township Board, 2 / 188. In determining the damages to which the owner is entitled, the jury should consider the benefits which accrue to the property from the improvement.—Township of Custer v. Dawson, 178 / 367.

ADJOURNMENT: An adjournment without fixing the time and place is fatal.—Dixon v. High. Com'r, 75 / 226. So is an adjournment beyond the time fixed by statute.—Wilson v. High. Com'r, 80 / 247. Upon adjournment, action not to be taken until adjournment day.—Price v. Stagray, 68 / 17.

COMPENSATION: The benefits to be received by a person whose land is taken are a part of the consideration for the release (or condemnation) of the land and when once vested are as much private property as the land itself, and neither the state nor any of its subordinate agencies, can deprive him or them without notice, a finding of public necessity and compensation ascertained by a constitutional jury.—Pearsall v. Supervisors, 74 / 559. One who petitions for laying out a street which would cross his land is not thereby precluded from claiming compensation therefor.—Turner v. Stanton, 42 / 506. Compensation is a constitutional condition of the taking of private property for a public way, and it can be lawful only when the necessity of the taking, as well as the measure of compensation has been determined in a legal way.—Sheldon v. Kalamazoo, 24 / 383. A privateway cannot be changed into a public highway without compensation to the owner of the land over which it runs; and the fact that the owner had allowed the public to use it, cannot be allowed to reduce the amount of compensation.—Ayres v. Richards, 38 / 214; 41 / 680. The compensation to be awarded to the owner of real property, taken for a public highway, is not the full value of the fee, since the title remains in the owner, but he is entitled to receive the value of the easement, or the full value of the interest taken.—Township of Custer v. Dawson, 178 / 367.

LAYING OUT HIGHWAYS: An order of a highway commissioner to lay out a highway beginning at a certain point "running nearly in a northwesterly direction near where the travel is now seeking to get the best route" to another specific point is void for the uncertainty in the description.—Blodgett v. Whaley, 47 / 469. Proceedings to open a street across the land of a railroad company were held invalid where the company was not named in the proceedings and did not appear, even though damages were awarded to it for the land taken. —D. M. & T. R. R. Co. v. Detroit, 49 / 47. Void proceedings by a commissioner, discontinuing a highway are not a bar to regular ones taken to widen it to the statutory width.—Weber v. Stagray, 75 / 32. Proceedings to discontinue a highway and lay out a new one and build a bridge cannot be united in one proceeding.—Cox v. Com'r of Highways, 83 / 193; nor proceedings to open one highway and discontinue another be combined. Only one proceeding can be taken at a time and every road must be opened and closed on its own merits.—Shue v. Highway Com'r, 41 / 638. A railroad company cannot claim as damages for the crossing of its tracks and sidetracks by a street the full value of the parcels of land crossed —Grand Rapids v. Bennett, 106 / 528. But are entitled as a part of damages to cost of erecting and maintaining safety gates, or towers, or employment of flagmen.—Id. Also expense of cattle guards, fencing and other outlay to complete the approach, besides the cost of maintaining them.—C. & G. T. R. R. Co. v. Hough, 61 / 507. A statute imposing this expense upon the railroad company is in conflict with the constitutional provisions, forbidding the

taking of private property without "just compensation."—Id. Where a highway is laid out parallel to and within one-half mile of an existing highway the damages awarded to the owner of lands taken cannot be estimated at less than their value for general farming purposes, unless by his assent, which fact must appear by the return of the commissioner.—Truax v. Sterling, 74 / 160. No statute or rule of law determines that, before a public highway can be laid out it must have certain and definite termini in other public highways.—Rogren v. Corwin, 181 / 53.

STATE ROADS: Boards of supervisors have exclusive jurisdiction in laying out, altering or discontinuing state roads.—Goldsmith v. Com'r, 15 / 347.

1470. Commissioner Shall File Record and Return.—Within five days after final determination upon any application for laying out, altering or discontinuing any highway, the commissioner shall file a full record and return of his doings in the premises with the township clerk. Such record, in addition to the minutes of the doings of the commissioner and his final determination, shall contain the copy of the application and notice, with the proof of service as provided in section four of this chapter, and, except in case of the discontinuance of a highway, the record shall also embrace a plat or map of the road, with the minutes of the survey signed by the surveyor, and the commissioner's award of damages, if any, and to whom payable, if known, all of which shall be signed by the commissioner and recorded by the township clerk. Id., Chap. I, Sec. 6. § 4293. [See Form Nos. 101, 102 and 103.]

RECORD AND RETURN: The record of proceedings to establish and lay out, or discontinue a highway must show that all the steps necessary to the validity of the proceedings were taken.—People v. Scio, 3 / 121; Mead v. High. Com'rs, 16 / 63; Van Auken v. High. Com'rs, 27 / 414; Schroeder v. Village of Onekama, 95 / 25. And a recital to that effect in the commissioner's return is not sufficient.—Id. The return must show (a) the date of the application, (b) the names of the land owners and others entitled to notice, (c) that the damage allowed such owners, respectively, was the value of the land for farming purposes, (d) an adjudication of a public necessity for laying out the road and for taking the land affected thereby for such purposes.—Cowing v. Ripley, 76 / 65. The proceedings must show affirmatively the requirements of the statute, and the jurisdiction of the court.—Price v. Stagray, 68 / 17. The failure to show in the return that the statutory notice was served is fatal to the proceedings.—Van Auken v. High. Com'rs, 27 / 415; Pegler v. High. Com'rs, 34 / 359; Moetter v. High. Com'rs, 39 / 726. And a certificate that they had "given notice according to law" is not sufficient.—Van Auken v. High. Com'rs, 27 / 415. A showing of notice of a meeting to be held April 25 will not uphold a meeting held May 11, in the absence of any showing of notice of such latter meeting, or that it was held as an adjourned meeting.—Pegler v. High. Com'rs, 34 / 359. The failure to show that notice was served upon one of the occupants of the land affected is fatal to the validity of the proceedings.—Wilson v. Township Board, 87 / 240. The proceedings are defective if the report does not show that notice of the application therefor and of a hearing upon it had been given to the parties interested. Moetter v. High. Com'r, 39 / 726. And the report must show when the hearing took place.—Id. The return must show affirmatively that the commissioner viewed the premises, ascertained and determined the necessity of his action.—Truax v. Sterling, 74 / 160; Cox v. High. Com'r, 83 / 193; Furman v. Furman, 86 / 391. Where the commissioner has gone out of office it is incompetent for them to make any addition or amendment to a return of their proceedings already made.—Mead v. High. Com'r, 16 / 63. A commissioner has no authority to determine the facts contained in his return. They must be shown to have been proven before a jury.—Ayres v Richards, 38 / 214; 41 / 680. See Page v. Boehmer, 154 / 693. The report of a highway commissioner establishing a highway is not deficient for failing to give the date of receiving the petition filed therefor, if the dates sufficiently appear from the petition itself and the notice served.—Gorham v. Johnson, 157 / 433.

1471. Appeal to Township Board.—Any person being a freeholder, or a holder of lands by homestead right within the township, who may conceive himself aggrieved by the determination of a commissioner in laying out, altering or discontinuing any highway, or in his award of damages, or in his refusal to lay out, alter or discontinue any highway, may, within ten days after such determination or refusal, appeal therefrom to the township board. Every such appeal shall be in writing, signed by the appellant and addressed to the township board and filed with the township clerk, and there shall be deposited with the township clerk the sum of twenty-five dollars to cover the cost of such appeal, and the said appeal fee shall be deposited in the general fund of the township unless said appeal shall be sustained, and if said appeal be sustained, the appeal fee so deposited shall be returned to the person making the appeal, and

the township clerk shall, as soon as may be after the time limited for taking appeals shall have expired, call a meeting of the township board to consider such appeal. Such clerk shall, at least ten days before the time appointed for such meeting, cause notice in writing of the time and place of such meeting to be served upon the appellant and the commissioner, or left at their respective places of residence. Id., Chap. I, Sec. 7. § 4294. [See Forms Nos. 79, 80 and 104.]

RIGHT OF APPEAL: A general appeal may be taken from the order of a commissioner of highways laying out a highway.—Brown v. Township Board, 87 / 240. No appeal lies to the township board from the refusal of a highway commissioner to lay out a highway.—Wilson v. Township Board, 87 / 240. The only persons who can seek a review of proceedings to discontinue a highway in whole or in part are the owners and occupants of lands through or adjoining which it is proposed to discontinue the road, which adjacency is confined to the part discontinued.—Kimball v. Homan, 74 / 699. A township board has no power to review the action of a commissioner except on appeal.—Anderson v. LaGrange Township, 2 / 188. An appeal waives previous defects and irregularities.—Prescott v. Patterson, 44 / 526. Award of damages.—Campau v. LeBlanc, 127 / 180. Where the only grievance lies in the award of damages, the proper remedy is by appeal.—F. & P. M. R. Co. v. Norton, 64 / 249. Members of a board who decided that the highway was a public necessity are disqualified from hearing a second appeal by the same land owner from the decision of the highway commissioner re-establishing said highway, former proceedings having been quashed in the circuit court.—Locke v. High. Com'r, 107 / 631. Review of order dismissing appeal.—Hartz v. Wayne Circuit Judge, 164 / 231.

NOTICE OF APPEAL: Notice of an appeal to the township board from the order of the highway commissioner is needful to confer jurisdiction to proceed. And: (1) Such notice cannot be shown by a mere recital in the final order of the board to the effect that due notice had been given.—Tefft v. Hamtramck, 38 / 558. (2) Proceedings of a township board reversing an order extending a highway, were quashed for want of it.—Id. (3) Without such notice a writ of certiorari to review proceedings of a highway commissioner will be dismissed with costs.—Wilder v. Hubbell, 43 / 487; Sanger v. Twp. Board, 118 / 20. (4) Without such notice the board acquires no jurisdiction on appeal.—Tefft v. Hamtramck, 38 / 558; Prescott v. Patterson, 44 / 525; Brazee v. Raymond, 59 / 548. A party who is not notified of the proceedings to establish a highway, can lose nothing by a failure to appeal, and where such proceedings are void, the owners of the land appropriated may treat them as such and bring trespass when their occupation is disturbed.—Names v. Com'r of High., 30 / 490. The fact of notice of a meeting of township boards to review the action of the commissioners is jurisdictional and must appear of record.—Prescott v. Patterson, 44 / 525.

1472. Determination of Board, and Appeal to Circuit Court.—The township board shall proceed at the time and place specified in the notice to hear the proof and allegations of the parties, and may examine persons on oath in respect to the matter of such appeal. Such decision shall be reduced to writing and signed by the board making the same, and filed in the office of the township clerk, and, together with all other papers relating to such appeal, shall be recorded as part of the record of the road. No commissioner from whose determination an appeal has been taken, and who may be a member of the township board, shall act on such appeal. Any party or parties dissatisfied with the determination of such township board, either as to the value of the property taken or as to the determination upon the necessity for laying out, altering or discontinuing a highway, when the amount involved or damages claimed exceeds the sum of three hundred dollars, may appeal therefrom to the circuit court for the county in which said land is situated, and a return may be compelled and the same proceedings shall be had thereupon, as near as may be, and with a like effect as in cases of appeal from judgments rendered before justices of the peace, and the costs thereon awarded and collected in the circuit court in the same manner. And for the purposes of such hearing in the circuit court and for the taxation of costs, the parties signing the application in the first instance, shall be considered and treated in all respects as the plaintiffs on such trial, and the parties opposing such application, either as to the amount found to be the value of the property, or as to the necessity for laying out, altering or discontinuing such highway, shall be considered and treated in all respects as the defendants on such trial; and on perfecting said appeal the pro-

ceedings from which said appeal is taken shall be stayed and no further steps therein shall be taken until the determination or dismissal of said appeal; and the said circuit court shall also have full power and jurisdiction over said proceedings to hear and determine the same and render judgment therein, as if the said proceedings had been originally commenced before the said circuit court. And either party to said proceedings on said appeal shall be entitled to have the issue in such proceedings tried by a jury, as in ordinary suits in said court. All appeals taken from the determination of such township board to the circuit court, whether taken separately or collectively, shall be heard at the same time and before the same court and jury. The determination and judgment rendered by said circuit court shall apply and be of equal force and effect as to each and all of said plaintiffs and as to each and all of said defendants as above defined, whether their appeals have been taken separately or collectively. This section shall apply to all appeals now pending or hereafter to be taken, and in cases where separate appeals have been heretofore taken under act number one hundred ninety-five of the public acts of nineteen hundred five to the circuit court from the determination of the township board as to the necessity for laying out, altering or discontinuing any highway, and decisions and determinations have been rendered on such separate appeals which are not in harmony with each other as to such necessity, then in all such cases the determination and judgment first rendered therein by such circuit court shall apply equally and be of full force and effect as to each and all of the plaintiffs and defendants as above defined, whether the defendants have taken their appeals separately or collectively, and the rights of each and all said parties shall be determined by and according to such first determination and judgment of the circuit court, subject to the right of appeal to the supreme court according to law. The duties prescribed to justices of the peace in cases of appeal from judgments rendered before justices of the peace, shall, in cases of appeal under this act, devolve upon and be performed by the township clerk: Provided, That in no event shall any costs be taxed against the township or the township board, nor against the parties signing the application for the laying out of any highway, except such party or parties as actually appeal or defend such appeal. Id., Chap. I, Sec. 8. § 4295. [See Form No. 89.]

HEARING: A township board has no power to review the proceedings of the commissioner of highways in laying out and establishing a road except on appeal to them under the statute, nor to review proceedings of the appraisers, except so far as to see that they are not void for want of jurisdiction.—Anderson v. Twp. Bd., 2 / 187. The action of township boards on appeal from the highway commissioners cannot be sustained if it does not appear that the party injured by it had notice of their meeting, even though the return shows that it was held at his house.—Prescott v. Patterson, 44 / 525. A township board on an appeal from a highway commissioner cannot go beyond the grounds of the appeal and pass on other matters.—Tefft v. Hamtramck, 38 / 588. See Soller v. Township of Brown, 67 / 422; Weber v. Stagray, 75 / 35; Brown v. Twp. Board, 109 / 557. A township board sitting to hear an appeal from the action of a highway commissioner in laying out a road has power to adjourn for any reasonable cause to a specified day.—Van Scoy v. Essex, 38 / 615. It is error for a township board to hear an appeal from a highway commissioner when two of the sitting members are financially interested in the result of the appeal.—Wilson v. Township Board, 87 / 240.

CERTIORARI: Certiorari to review action of the board on an appeal should be directed to the board and not to the commissioner whose action was appealed from.—Goodrich v. High. Com'rs, 1 / 387; French v. High. Com'rs, 12 / 267; Crawford v. Twp. Bds., 22 / 405. This act providing an adequate remedy by appeal to review the highway commissioner's action in laying out a road and determining the damages sustained, and of the township board, certiorari will not issue from the circuit court to review such proceedings.—Hartz v. Brown, 165 / 660. It is only if no other remedy exists that courts review special proceedings by certiorari; and in eminent domain proceedings to lay out a highway, appealed to the circuit court, an aggrieved party may review the judgment by writ of error, since the legislature indicated a purpose by said act to permit appellate review in the supreme court.—Township of Custer v. Dawson, 178 / 367. Certiorari treated as a writ of error.—Id.

APPEAL: The jury in eminent domain proceedings, on appeal from a verdict and award

for taking appellant's property for a highway, has authority under the statute to determine disputed boundaries involved in the taking of a part of the lands, where a controversy arises as to the location of the section line by the surveyors.—Letourneau v. Erickson, 182 / 617. Where the question was properly raised in the court below, appellant was entitled to have the issue tried by the jury and settled, before steps were taken to open and improve the highway.—Id.

1473. When Appellant to Pay Costs.—In case the determination of the commissioner upon which an appeal is taken be confirmed, or if his award of damages shall not be increased, the appellant shall pay the whole amount of costs of such appeal, such costs to be ascertained and determined by the township board and deducted from the amount of damages awarded; and if there be not sufficient damages from which to pay such costs, the appellant shall be liable for the amount of the same in an action at law. Id., Chap. I, Sec. 9. § 4296.

COSTS: Application in due form having been made to highway commissioners for laying out a road, and they having made an order laying out a part of it only, and the township board on appeal having confirmed their action, the supreme court on quashing these orders on certiorari, refused to award costs, as the township board was acting judicially on an application giving the commissioners jurisdiction.—People v. Township Board of Springwells, 12 / 434. Costs on dismissal of a writ of certiorari were nevertheless allowed to the plaintiffs therein where legal cause therefor existed at the time the writ was taken out.—Rentz v. Detroit, 48 / 544. The township board is not bound by the decision of the commissioner as to the amount of damages awarded, but may increase or diminish the same.—Brown v. Twp. Bd., 109 / 557.

1474. Joint Action of Adjoining Townships.—In case of application under the second subdivision of section one of this chapter, the commissioner to whom such application is made shall, within five days after receipt thereof, notify the commissioner of the adjoining township, and they shall forthwith jointly appoint a time and place of hearing, which shall not be less than ten nor more than twenty days from and after the receipt of the application. The commissioner of each township shall give the same notice to the owners and occupants of land within his township that commissioners are required to give in case of applications for laying out roads within townships, and like proceedings shall be had, so far as may be, as is required in such cases, and the commissioners shall jointly consider such application and determine as to the necessity for laying out, altering or discontinuing a highway in pursuance thereof. The hearing upon any such application may be adjourned from time to time, not exceeding twenty days, but the officers acting shall in all cases meet at the time and place appointed, or to which an adjournment may be had. The full record in such cases shall be filed, preserved and recorded in the township where the commissioner resides to whom the application was made, and a copy thereof shall be filed and recorded in the township cooperating in like manner as in case of laying out roads in townships. The said township board shall cause to be established and improved a public highway to each and every public school building in any organized school district in every township, and where a highway is already laid out and established, and not improved and made passable to any such public school building, the said board shall cause the same to be so improved and made passable for public use. Id., Chap. I, Sec. 10. § 4297. [See Form No. 105.]

LINE ROAD: Proceedings for laying out a township line road must be taken jointly by the commissioners, and such action by one commissioner is void.—Brewer v. Gerow, 83 / 250. The commissioners acting jointly in laying out any line road may, for good cause, deflect the line thereof from the boundary line and may locate such road in the same manner as if located on the boundary line; when so located, such road shall be deemed a line road.—Bigelow v. Brooks, 119 / 215. See also notes to Section 5.

For "second subdivision of Section one," above referred to, see Section 1465 of this Guide.

1475. Application for Road Between Township and City or Village. —In case of application under the third subdivision of section one of this chapter, it shall be the duty of the commissioner of highways of the township and the mayor or president of the adjoining city or village to forthwith jointly appoint a time and place of hearing which shall not be less than ten nor more than twenty days from and after the receipt of the application. The commissioner of highways and the mayor or president of the city or village shall give the same notice to the owners and occupants of land within their respective territory that commissioners are required to give in case of applications for laying out roads within townships, and like proceedings shall be had, so far as may be, as required in such cases, and the commissioner and officer or officers shall jointly consider such application and determine as to the necessity for laying out, altering or discontinuing a highway in pursuance thereof. The hearing upon any such application may be adjourned from time to time, not exceeding twenty days, but the officers acting shall in all cases meet at the time and place appointed, or to which an adjournment may be had. The full record in such cases shall be filed, preserved and recorded in the office of the clerk of the township, city or village making such application and a copy thereof shall be filed and recorded with the proper officer of the city or village so cooperating. Id., Chap. I, Sec. 11. § 4298. [See Form No. 106.]

For "third subdivision of Section one," above referred to, see Section 1465 of this Guide.

1476. Allotment and Maintenance of Line Roads.—Whenever a line road shall have been laid out and established pursuant to the two last preceding sections, the officers or authority having jurisdiction in the premises shall forthwith jointly determine as to the time when the same shall be opened and improved, and shall at the same time determine and allot what portion shall be opened, improved and maintained by either of such townships or municipalities; and such township or municipality shall have all the rights and be subject to all the liabilities, in relation to the part of such road so allotted, as if the same was located wholly in such township or municipality, and the damages which may be assessed in any case, together with the costs and expense of the proceedings, shall be apportioned by the joint action of such authorities to and paid by the townships or municipal corporations on the line between which said line road may be located, in proportion to the benefit to be derived therefrom by such townships or municipal corporations: Provided, That should any part of such line road either now established or hereafter to be established, become at any time abandoned, or should the division of such line road between such townships or municipalities, for opening, improvement and maintenance become at any time unjust and inequitable for any cause, then on the written application of seven or more freeholders of either township or municipality, addressed to the commissioner of either township or municipality, the commissioner to whom such application is made shall within five days after receipt thereof, notify the commissioner of the adjoining interested township or municipality, and the two shall forthwith jointly appoint a time and place of hearing which shall not be less than ten nor more than twenty days after receipt of the application. Notice of the time and place of such hearing shall be posted in three public places in each township

or municipality affected, or published at least one time in a newspaper printed and circulated in the township or municipality affected, at least five days before the date of such hearing, and no other notice of same shall be required. Such hearing may be adjourned from time to time, but no longer than twenty days. At such hearing said commissioners shall jointly determine whether the former division of such line road is just and equitable, and if not shall determine and allot what portion of same shall thereafter be improved and maintained by either of such townships or municipalities, which allotment shall take effect immediately thereafter. Should such commissioners be unable to agree, then they shall adjourn such hearing, and on the adjourned day associate with themselves the commissioner of some other township of the county or counties traversed by such road, and the three shall sit together and determine such questions by majority vote: Provided further, That whenever a line road or bridge shall have been laid out and established pursuant to the previous sections, and the officers refuse or neglect to construct or maintain their designated portion thereof in a manner reasonably safe and fit for public travel, then the state highway commissioner shall upon petition of seven freeholders of either township, inspect the merits of the petition, and if said state highway commissioner decides with the petitioners, he shall direct the officers of said township to which the road or bridge belongs to so construct and maintain such road or bridge, and in default thereof he shall be authorized to direct the supervisor of said township to spread the amount necessary to properly construct and maintain said road or bridge upon the assessment roll, and said state highway commissioner is then authorized to construct or order the township commissioner to construct the said road or bridge. Id., Chap. I, Sec. 12. § 4299. As Am. by Act 356 of 1917. [See Form No. 106.]

ALLOTMENT TO TOWNSHIPS: Each township is liable to keep its portion of line road in repairs.—Bridge Co. v. Jasper Township, 68 / 441; and a verbal agreement of allotment is binding.—Sharp v. Township of Evergreen, 67 / 443; making each liable for injuries received by a traveler on its portion.—Id. Neither township can legally obligate itself to aid in the erection of a bridge forming a part of that portion of said highway allotted to the other township.—Bridge Co. v. Jasper Township, 68 / 441. See also views as to existing contracts between townships concerning township line roads and bridges, prior to repealing or amending acts in Stitt v. Casterline, 89 / 239, and cases cited. A township which undertakes to keep the bridge in repair, on its line between that and another township, in pursuance of an attempted agreement between the adjoining townships to maintain specified division of the highway, is liable for negligence in keeping the bridge repaired.—Hunter v. Township of Dwight, 157 / 634.

1477.—Deflection from Boundary Line.—The commissioners, or commissioner, mayor or president of such city or village acting jointly in laying out any line road may, if they consider it necessary to avoid any obstruction, or for other good cause, deflect the line thereof from the boundary line, and they may locate and establish such road in the same manner as if the line thereof were upon the boundary line; and when so located and established, such road shall be deemed a line road for all the purposes contemplated by this chapter, and the same shall be opened and improved in the same manner and with the same powers, privileges, and liabilities as in case of line roads. Id., Chap. I, Sec. 13. § 4300.

1478. Appeals from Joint Action.—The provisions of this chapter relating to appeals shall apply to the laying out and altering of line roads between townships or between a township and an adjoining city or village, by joint action. Notice of such appeal may be served on the township clerk of either township, or on the township clerk and city or village

clerk, as the case may be, and the officers receiving such notice of appeal shall, as soon as may be, appoint a time and place of hearing upon such appeal, and shall notify the appellant and the officers whose action is appealed from, of the time and place of such hearing in the same manner that the township clerk is required to notify appeals from the determination of a commissioner of highways, and such appeal shall be considered by the township boards jointly, or by the township board and city or village council jointly, as the case may be, and the same proceedings shall be had thereon, and the record thereof shall be made in the same manner as is provided for in laying out line roads pursuant to sections ten and eleven of this chapter. Id., Chap. I, Sec. 14. § 4301.

Where one feeling himself aggrieved by the action of the highway commissioners in the matter of laying out a road on a township line, had taken advantage of the appropriate remedy by appeal to the township boards there being no showing of peculiar and exceptional circumstances, the court declined to order a writ of certiorari to review the proceedings.—Burt v. High. Com'rs, 32 / 190.

See notes to Sections 1472-1474.

1479. Discontinuance of Line Road in Use Ten Years.—No line road which shall have been in use as such for a period of ten years shall be discontinued, except upon the unanimous vote of all the officers or authorities present and acting in the premises, approved, in the case of township roads, by the township board, and in case of line roads, by the township boards, or by the township board and city or village council, as the case may be; and no second application shall be entertained within twelve months, or a third application within two years, for the discontinuance of any such road, unless twice the number of freeholders shall sign the application as is required in the first instance. Id., Chap. I, Sec. 15. § 4302.

SECOND APPLICATION: Proceedings by the commissioner on a second application within one year from that of the first are void.—Sage v. Township Board, 13 / 462. As to disqualification of members of board to act on "second appeal," see Locke v. Highway Com'r, 107 / 631.

TEN YEARS: A road recognized as a town line road for more than ten years must, under Section 21, be deemed to be such, though proof is lacking that it was established by joint action of the township commissioners.—Bigelow v. Brooks, 119 / 208.

1480. Survey of Highways.—Whenever a highway shall be laid out or altered, the commissioner, mayor or president of any city or village shall cause an accurate survey to be made of the center line thereof, describing the commencing and terminating points of the same from some established corner of a regular subdivision of a section, or other determinable point. Bearing trees or monuments shall also be noted at such commencement and termination and at each angle along the line of the road when practicable. Whenever a road not on a section, quarter section, or some other regular subdivision line of a section, crosses a section line, the distance from the last preceding angle in such road to such section line shall be noted; also the distance from the point of intersection to the nearest section corner post, quarter post, or meander post on one side of such point, if there be one within one mile, and the premises belonging to any highway shall be a parcel of land not less than two rods wide on each side of the line of survey. When the survey is made, permanent monuments shall be established by the surveyor every eighty rods along the line of such highway. Id., Chap. I, Sec. 16. § 4303.

SURVEY: The declaration in an action by a commissioner of highways against the county surveyor for his failure to lay out a quarter section line correctly is not demurrable on the ground that defendant is sued in his individual character while described in his official.—High. Com'rs v. Beebe, 55 / 137. The surveyor is required to do the work properly and cor-

rectly.—Id. The survey of a road from its commencement to its termination is an entire thing, and a part of the record of such survey giving the course and distance across a particular section only, cannot be read in evidence, without permitting the whole record of the survey to go to the jury.—Moore v. People, 2 Doug. 420. Parol evidence of the existence of certain marked trees and monuments not called for in the survey of a road is inadmissible to establish, by these marks and monuments, a line of the road variant from that called for by the courses and distances, by which alone such line is designated in the survey.—Id.

1481. Highway to Correspond in Width with Street in City or Village.—Whenever any public road shall be laid out in any township adjoining any city or village, and on the line with any public street, avenue, or way in such city or village extended, the commissioner is hereby authorized to lay out such public road, or any portion thereof, in width to correspond with such street, avenue or way in such city or village, of which the said public road is an extension, and roads thus situated may be widened under the same proceedings as are provided for laying out, altering and discontinuing highways. Id., Chap. I, Sec. 17. § 4304.

1482. Removal of Fences on Laying Out Highway.—When compensation for any damages that may have been awarded in consequence of laying out or altering any highway shall have been paid or tendered to the persons entitled thereto, pursuant to the provisions of section twenty-four of this chapter, the commissioner may give notice to the owner or occupant of any land through which such highway may have been laid out or altered, and require him, within such time as he shall deem reasonable, not less than sixty days after giving such notice, and after the time when it shall have been determined to open such highway, to remove his fence or fences, and in case such owner or occupant shall neglect or refuse to remove the same within the time specified in such notice, the commissioner or other proper officer shall have full power, and it shall be their duty to enter, with such aid and assistance as shall be necessary, upon the premises, and remove such fence or fences and open such highway, without delay, except that in townships such removal shall not be required between the first day of May and the first day of September. Id., Chap. I, Sec. 18. § 4305. [See Form No. 107.]

Notice given for removal of obstructions.—Hoag v. Boehmer, 162 / 330.

1483. Commissioner to Secure Right of Way.—The highway commissioner shall secure the right of way for any road by gift or purchase from the owners of the land to be crossed by such road; such right of way shall be acquired by a release duly executed by the owner or owners of the lands and shall be taken in the name of the township wherein the same is located, acknowledged and witnessed as is now provided for the acknowledging and witnessing of deeds, and recorded in the office of the register of deeds of the county before any highway money shall be expended in opening such road. Whenever any owner or owners of land shall give the same or any part thereof for highway purposes and shall give a release of the same, if a road shall be opened and worked thereon within four years thereafter, the person or persons giving such deed, or those claiming under him or them, shall be precluded from having any action to recover possession of such land or any compensation therefor, so long as the same shall be used as a highway. Id., Chap. I, Sec. 19. § 4306.

DEDICATION: In determining whether there has been a dedication, all the acts of the owner bearing upon the question are to be considered together. One act may be explained or qualified by another. A dedication cannot be made without an intent to dedicate. If the

owner of land do such acts as show unequivocally an intent to dedicate his land to the public for a highway, such dedication, if properly accepted will make the land dedicated a public highway without reference to any particular period of time.—People v. Jones, 6 / 176; Alton v. Meeuwenberg, 108 / 629. The conduct of an abutting owner in consenting to a survey to fix the line of the highway; his promise to remove his fences as encroaching thereon; their subsequent removal by the highway commissioners after notice to him, and his admission that their claim was right, were held admissible in evidence in an action against the commissioners for removing the fence, as showing a dedication not by parol but by present unequivocal acts. —McMillan v. McCormick, 38 / 693. Where a public way was claimed as declared by certain plats, and also by acts in pais, and it appeared that the owners of the premises had always occupied the locus as private property, and excluded the public therefrom.—Held, that the right to the way must depend upon the plats alone, and could not be claimed unless the plats showed an intention to give it.—Cook v. Hillsdale, 7 / 115. By the express dedication of a strip of land of designated width to the public as a highway, any implication of the dedication of a wider strip is precluded.—Bedard v. Simons, 160 / 545.

ACCEPTANCE: A grant of land, or dedication must be accepted before it can take effect, and although acceptance may be presumed when the grant is beneficial, there can be no conclusive presumption that a grant of land for a public way is so. It may be a burden rather than a benefit.—Wayne County v. Miller, 31 / 447. In case of a city street the acceptance should be manifest by some act of the authorities.—People v. Jones, 6 / 177. Yet the intent to dedicate being clear, acceptance is implied from the user, and improvements paid for by assessments on the land of abutting owners.—Nichols v. Furniture Co., 100 / 230. Public user alone, when sufficiently general and long continued, will constitute an acceptance of a county road.—Adams v. Iron Cliffs Co., 78 / 271. Marking out a street on a village plat does not necessarily make the space a public way, unless the public authorities accept it as such.— Buskirk v. Strickland, 47 / 389. Where a citizen offers on certain conditions to open a street across his land for the public use, the acceptance of the offer by the proper authorities is a sufficient declaration of its necessity as a public improvement, if such a declartion is needed. —Long v. Mayor, 39 / 323. Acceptance is necessary before indictment will lie for obstruction.—People v. Beaubien, 2 Doug. 257. And indictment against the proprietor for obstructing it, is not of itself a sufficient acceptance.—Id. Acceptance may be refused by direct act of the authorities.—Plumer v. Johnston, 63 / 165.

MISCELLANEOUS: One who has opened a street which the public authorities have accepted and improved, has no right, after much time has gone by, and rights have grown up, to shut it up again on the ground that the authorities have not performed an oral condition which was made with them at the time of opening the street; but he may have a remedy at law for breach of condition.—Port Huron v. Chadwick, 52 / 320. The county acquires no beneficial ownership of land dedicated to the public use as a street, and cannot dispose of it or control its use or enter into actual possession of it; and when the easement is ended its right ceases.—Bay county v. Bradley, 39 / 163. Private land owners can get no better right of way in a street than that offered to the public for acceptance.—Plumer v. Johnston, 63 / 166, citing Tapert v. D., G. H. & M. R'y Co., 50 / 271.

1484. Public Highways Defined.—All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for ten years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used eight years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be four rods in width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be two rods in width on each side of such lines. Id., Chap. I, Sec. 20. § 4307.

HIGHWAYS BY USER: Highways by user are based upon the implied dedication of the land by the owner.—Kruger v. Le Blanc, 70 / 76. The way must be one over which all the people of the state have a common and equal right to travel.—People v. Jackson, 7 / 432; and has no application to mere private ways.—Green v. Belitz, 34 / 513. Public user alone, when sufficiently general and continued the statutory period, will constitute a highway by user, and an acceptance of the same.—Adams v. Iron Cliffs Co., 78 / 271; Village of Grandville v. Jenison, 84 / 54. See Neal v. Gilmore, 141 / 519. But see Irving v. Ford, 65 / 520. Where the width of a highway was in dispute, it was held that that part in excess of the legal dedication was not converted to the public use, by merely passing over the land for any length of time. Also, where the owner, pursuant to an agreement with the authorities, allowed his fence to be moved in two rods until the highway proper could be repaired, and allowed to remain ten years under renewed promises to repair held not to create a highway by user.—Homer Township v. Ricker, 79 / 551. A mere permissive use of a private road by the general public, however long continued will not make it a public highway.—Stickley v. Sodus Township, 131 / 510. The statute does not fix the number who must travel upon a highway in order to determine whether it exists by user; it must be used by the public and the public are all who have occasion to use it.—Grandville v Jenison, 84 / 55. In a dispute as between a survey record and the use of a margin of a lake as highway, the survey record being more certain, must control.—Hoffman v. Port Huron, 101 / 417. Partial acceptance of an offered grant of land for the purposes of a public street, will, with the consent or acquiescence of the donor, establish the street to the extent of public occupation but no further.—County of Wayne v. Miller, 31 / 447. Whether a highway lawfully exists over private property, is a question which cannot be settled against the owner without the right to a trial in due course of law,

and a municipal board can not decide upon it so as to bind him, and acts at its peril in attempting it. Such municipal action is not judicial; and if it were it would be void, because an interested party cannot be a judge in his own cause.—Sheldon v. Kalamazoo, 24 / 383. Long practical acquiescence as between the public and a private owner as to the true line of the latter's fences along the highway will bind the public.—Gregory v. Knight, 50 / 61. In a dedication to the public use of street, a strip reserved for sidewalk, shrubbery and ornamental purposes, becomes a portion of the street by user.—Dickerson v. City of Detroit, 99 / 498. A road that can be advantageously used by the public only by trespassing on private property is not properly a public highway.—Ayers v. Richards, 41 / 680. A decree recognizing a road as at least a private way when it was really public need not be disturbed if the parties are satisfied and the public authorities are not parties to the suit, as it cannot destroy any public rights.—Nye v. Clark, 55 / 600. Evidence that a logging road was opened in 1872 across unlocated public land and used continuously until 1905 as such and by the general public, that it was kept in repair chiefly by private parties using it to haul forest products over, and that township officers expended money upon it, is sufficient to go to the jury on the question of highway by user, though land was entered in 1902 by defendant as a homestead.—Parkey v. Galloway, 147 / 693. In order that a way customarily used by the public may become a public way by user, the public must not only use it as a thoroughfare, but the implied dedication must be accepted by the public authorities and the way taken in charge and maintained as other highways.—Chapman v. Sault Ste. Marie, 146 / 24.

TEN YEARS' USE: It makes no difference in computing the time, that part of the twenty years had run when the statute took effect, and part of it afterwards.—Bumpus v. Miller, 4 / 159. A road that has been used and recognized for twenty-one years and had previously been laid out, surveyed, fenced and worked by the highway commissioners as a town line road, is properly treated as a public highway even though it has been allowed to grow up in brush outside of the actual roadway.—Nye v. Clark, 55 / 600. User of land for the statutory period as a public highway conclusively establishes dedication of the land for that purpose.—Campau v. City of Detroit, 104 / 560. A street that has been established and recognized for more than ten years cannot be shifted unless according to charter and statutory conditions.—Pratt v. Lewis, 39 / 7. A private road, laid out as a public highway and used and maintained as such for upwards of ten years, becomes a public highway by prescription.—Hinckley v. Dennison, 169 / 361.

EIGHT YEARS: The use of a highway for eight years after its discontinuance makes it a public highway, by virtue of its subsequent user.—Curry v. Place, 99 / 555. An unrecorded road laid out and constructed by a township and actually used for eight years becomes a public highway, and its non-user for two years, in the absence of any proceedings to discontinue it, will not entitle a railroad company to exclude the public by fencing in its right-of-way at that point.—McNamara v. Ry. Co., 95 / 545; Bigelow v. Brooks, 119 / 216.

STATUTORY WIDTH: Highways by user are based upon the implied dedication of the land by the owner, and where there is nothing to indicate a contrary intention, the presumption is that the owner intended to dedicate the land to the full legal width, which contrary intention is indicated by the owner's placing fences or other means, within the statutory width during the time the statute is running, in which case the public is only entitled to claim the part which it has been permitted to use.—Kruger v. LeBlanc, 70 / 76. A highway by user need not necessarily be of the statutory width, but it becomes such to the width and extent used.—Savings Bank v. Stockwell, 84 / 587. This statute fixing the width at four rods of highway by user, cannot change vested rights.—Coleman v. F. & P. M. R. R. Co., 64 / 160. The use by the public of a portion of a strip of land claimed to be a public way does not, of necessity, either in city or country, determine the public right to extend over four rods in width.—Detroit City v. Myers, 152 / 666. Due process of law.—Watz v. Sunderland, 147 / 96.

PUBLIC USE: The rights of the public in a highway will not be lost, by anything short of an actual abandonment of the use by which they secured it.—Village of Grandville v. Jenison, 84 / 54. The listing of the land for taxes and payment thereof by the owner does not affect the rights of the public in the land.—Ellsworth v. Grand Rapids, 27 / 251; Campau v. Detroit, 104 / 560. The mere making and recording of a plat upon a paper by the owner of the land, ignoring the existence of a road in actual use is not such an interference with the public user of such road as to affect the limitation prescribed by the statute.—Ellsworth v. Grand Rapids, 27 / 251. A right-of-way that is too indefinite for a determinate description cannot be established and protected by a court of chancery.—Fox v. Price, 50 / 500. When the facts are such as would show that a land owner had obtained a prescriptive right against the public, so as to reduce the width of the road, to less than four rods, the jury should find where the highway by user was.—McKay v. Doty, 63 / 581. Where the center line of a highway is identical with the quarter section line, the limit of the highway is two rods on each side of the quarter line, but where the traveled track is considerable distance from the quarter line, the highway boundary would be two rods from the center of the traveled track.—McKay v. Doty, 63 / 581. A dedication of a highway when not expressly, or impliedly restricted by the owner is not confined to the beaten track, but includes the four rods in width as provided by statute.—Bumpus v. Miller, 4 / 159. The reservation of land as a private way negatives its dedication to the public.—Detroit v. Myers, 152 / 666. Highways by user, see Brown v. Twp. of Byron, 189 / 584.

MISCELLANEOUS: A private way cannot be converted into a public highway, without compensation to the owners of the lands over which it runs.—Ayres v. Richards, 41 / 680. There is nothing in the present law of this state which forbids the altering of a highway on account of its long continued use.—Weber v. Ryers, 82 / 177, 179; citing 65 / 638; 68 / 17. This statute, designed to cure defects in the laying out and recording of highways, has no application to mere private ways but is confined to public highways.—Green v. Belitz, 34 / 512. Where any part of a highway has been extinguished and turned to other uses, it cannot be renewed without the same methods of dedication or user which would turn other lands into public ways.—Cooper v. Detroit, 42 / 584. A legally laid out and established highway does not lose its character as such by the erection and maintenance of a gate across it, for a time, by an adjoining land owner, nor is he or his grantees thereby stopped from claiming it as a public highway.—Van Brunt v. Lynch, 76 / 455.

NUISANCE: An unauthorized obstruction across a public street is a public nuisance which any citizen desiring to travel along the street may abate.—Neal v. Gilmore, 141 / 519.

1485. Commissioner to Cause Roads to be Recorded.—The commissioner of highways of each township shall cause all roads in his township coming within the purview of the last preceding section, the records of which may be defective, and all others, the records of which are defective, to be ascertained, described and entered of record in the township clerk's office. Id., Chap. I, Sec. 21. § 4308.

The survey of a road as provided by this section, for the purpose of ascertaining and describing it in order that it may be recorded is not the laying out of the highway, and the certificate of such survey is inadmissible to prove that the highway described had been laid out by the commissioners.—Parker v. People, 22 / 93. See also Bumpus v. Miller, 4 / 159. Laying out without application, etc.—Names v. High. Com'rs, 30 / 491.

1486. Highway Not Opened within Four Years Discontinued.—Every public highway already laid out, or hereafter to be laid out, no part of which shall have been opened and worked within four years after the time of its being so laid out, shall cease to be a road for any purpose whatever. Id., Chap. I, Sec. 22. § 4309.

So held where a street in the city of Detroit was appropriated to other use.—Cooper v. City of Detroit, 42 / 584. The fact that no part of a highway was opened and worked within four years after being laid out, does not prevent the establishment of the hihgway by user under Section 21, but would merely require a user of ten years instead of eight.—Neal v. Gilmore, 141 / 519.

1487. Damages and Benefits in Certain Cases.—If any discontinued highway shall be upon lands through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner of such lands; and in like manner the benefits accruing to owners of lands by reason of laying out or altering any highway shall be taken into consideration. Id., Chap. I, Sec. 23. § 4310.

The proper municipal authorities can discontinue a portion of a street, if they could do so otherwise in consideration of the opening of another street and outlet by a private citizen whose interests are affected in both cases.—Bauman v. Detroit, 58 / 444.

1488. Damages Awarded Before Highway Opened.—When any damages may be awarded under the provisions of this chapter in consequence of laying out or altering any highway, before such highway shall be opened, the amount of such damages shall be paid or tendered to the person or persons entitled thereto, or an order on the treasurer of the proper township, city or village, for the amount of such damages, shall be delivered or tendered to such person or persons, and if the owner of any lands upon which any damages may be awarded be unknown, and such lands be not occupied, an order for the amount thereof shall be drawn upon the township treasurer and deposited with the township clerk, payable to the owner of the description of land upon which such damages were awarded, describing such lands by their legal subdivision in such order, which order shall be held by the township clerk to be delivered to the owner of such lands when called for or otherwise lawfully demanded. The amount of any such damages shall be assessed, levied and collected upon the taxable property of the township, city or village chargeable therewith, in the same manner as other taxes are levied and collected. Id., Chap. I, Sec. 24. § 4311.

DAMAGES: Where a road has been formerly established and the damages appraised, and return made and certified according to the statute, such damages are made a township charge.—Anderson v. LaGrange Township, 2 / 187 (see also Marathon v. Oregon, 8 / 380); the amount is settled by the appraisal, and it then becomes the duty of the township board to draw their order accordingly.—Id. But interest is not allowed on the amount awarded.—Id. The order must name the payee so as to show on its face the person to whom it is payable.—Lull v. Curry, 10 / 397; see also Anderson v. LaGrange Township, 2 / 189. Where the proceedings in laying out a highway are not legal, and the road had not been opened, the township board was justified in refusing to make an order for the payment of claims presented for

damages.—Chubb v. Township Board, 3 / 121; but where the jury found the taking necessary, and assessed the damages and the road was opened, under a statute requiring the finding to be certified by the justice, it was held that the town could not resist payment on that ground. —Holcomb v. Township of Lowell, 9 / 145. Payment of damages.—People v. Zilwaukee Twp. Bd., 10 / 274. As to compensation for private property taken for public use, see Art. XIII, Constitution. What the statute, under the constitution, aims to do is to give the owner fair value for what is taken; in other words, to place him in such a position that the value of what he retains, plus the damages awarded, shall equal the value of his property before the highway was laid out.—Township of Custer v. Dawson, 178 / 371.

1489. When Special Commissioners Fail to Act.—In any case where the legislature has granted or shall grant power to a board of special commissioners to lay out any road, and such commissioners shall not, for the term of one year after the time of their appointment, have laid out and proceeded to open such road, it shall be lawful for commissioners of highways to lay out and open highways upon the route thereof, in the same manner as if no special commissioners had been authorized. Id., Chap. I, Sec. 25. § 4312.

1490. Highway Across Railroad Track and Right of Way.—Before laying out any highway under the provisions of this act where the same crosses the track and right of way of any railroad company, steam or electric, application shall be made to the Michigan railroad commission for permission to make such crossing and thereupon it shall be the duty of said commission to make such examination of the location of such proposed crossing as it may deem necessary. At such examination the railroad company and the township, good roads district or county interested shall be entitled to be heard after the service of proper notice upon them by the Michigan railroad commission. If the location of the proposed crossing is found, upon said examination and hearing, to be feasible and reasonably safe for a crossing at grade, it shall be the duty of said commission to grant permission for such crossing to the highway officials making such application and issue specifications for same which shall include approaches, cattle guards, fences and such other safeguards as in their judgment will make said proposed crossing reasonably safe, but if, on examination and hearing, the Michigan railroad commission shall deem the proposed location for the said crossing extra hazardous, then the said commission shall notify the state highway commissioner and the said railroad commission and state highway commissioner acting jointly, shall examine the site of the proposed crossing, in company with the parties in interest, and shall have power, if in their judgment it is necessary, to cause a re-location of the proposed highway and crossing on a line which will provide a reasonably safe point for such crossing as a condition of approval of said application. However, if said Michigan railroad commission and state highway commissioner jointly, after examination, determine that it is impracticable to secure a reasonably safe crossing at grade by re-locating the same, they may order a separation of the grades, the same to be constructed according to plans which shall be submitted to the said railroad commission and state highway commissioner for their joint consideration and approval: Provided, That should such plans not meet with the approval of the railroad commission and state highway commissioner, such changes as they shall jointly deem advisable shall be made before the construction of said crossing is commenced. If the said railroad commission and state highway commissioner jointly determine that it is impracticable to secure a reasonably safe crossing by any of these methods, then the said railroad commis-

sion and state highway commissioner jointly may refuse to allow such crossing. If permission be granted for such crossing, either at grade or otherwise, the same proceedings in relation to acquiring the rights of way for such highway across the land of said railroad company including the right of way across the tracks shall be had as in other cases. Service of all papers shall be made in the same manner upon such railroad companies as is provided by law for service of summons on railroad companies. Such railroad companies shall be entitled to receive the actual value of the use of the land taken for such highway and when the compensation awarded such railroad company for such damages as above provided shall have been paid or tendered to any person in charge of the ticket or freight office of such company entitled thereto and situated nearest the said highway crossing pursuant to the provisions of section twenty-four of this chapter, then and in such case such right of way shall be deemed to be fully acquired and secured for the public. The highway officials shall then notify in writing such railroad company to furnish a competent superintendent or track man to superintend the construction of such crossing which shall be according to the plans and specifications approved by the Michigan railroad commission when such crossing is at grade and the Michigan railroad commission and state highway commissioner when such crossing is other than at grade and such township, good roads district or county shall pay to such railroad company a per diem compensation for such superintendent, the compensation to be determined by the Michigan railroad commission for a crossing at grade or the Michigan railroad commission and the state highway commissioner jointly, not exceeding three dollars per day, for a crossing other than at grade, for the time actually and necessarily spent in superintending such construction, and such highway officials are authorized to issue orders for the payment of such superintendent. In case such railroad company refuses or neglects to furnish a superintendent for the construction of such crossing as aforesaid, then and in such case it shall be the duty of the railroad commission, if such crossing be at grade, or the Michigan railroad commission and the state highway commissioner jointly, if such crossing be other than at grade to appoint some suitable person, who shall receive the compensation aforesaid from the said township, good roads district or county, to oversee and superintend the construction of such crossing. If any railroad company shall attempt to obstruct the opening of any such highway after such right of way has been secured and payment for damages herein provided for has been made and tendered as herein provided, by any agent, officer or employe or other person, the said railroad company shall be liable to a penalty of twenty-five dollars for each day the opening or construction of such highway is impeded, for the benefit of the township, good roads district or county, and such township, good roads district or county may sue for and recover such penalty in the circuit court for the county in which such crossing is located, in the name of the township, good roads district or county; and in addition thereto, if any officer, agent or employe, or person acting for and in the interest of any railroad company shall annoy, hinder or obstruct any highway official, contractor or person employed by him or them in opening such highway or constructing the same according to the specifications issued by the Michigan railroad commission or the Michigan railroad commission and the state highway commissioner

jointly, then such officer, agent, employe or person shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed ninety days, or both such fine and imprisonment in the discretion of the court. All material and labor used in the construction of such crossing shall be furnished by the township good roads district or county applying for such crossing. No public highway shall hereafter be constructed across the track of any railroad corporation nor shall the tracks of any railroad corporation be constructed across a public highway without having first secured the permission of the Michigan railroad commission: Provided, That such crossing is proposed to be at grade. If other than at grade, permission shall be granted jointly for such crossing by the Michigan railroad commission and the state highway commissioner. The said railroad commission when acting alone, or the railroad commission and state highway commissioner when acting jointly, shall have the right to refuse permission or to grant it upon such terms and conditions as they may deem necessary for the preservation of public safety. The Michigan railroad commission and the state highway commissioner jointly shall have power, when in their judgment they deem it necessary for the safety of the public, to change the location of or abolish any existing crossing of railroads with highways and to require, when in their judgment it would be practicable, a separation of grades at any such crossing and to prescribe the manner of construction and the terms upon which such separation shall be made and the proportion in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad corporation and the state, county, good roads district or township: Provided, That no disposition shall be made of this matter until after all parties in interest shall have been afforded an opportunity to be heard in relation thereto. The state's portion of the cost of such changes as may be ordered by the provisions of this act shall in no case exceed twenty-five per cent of the total cost of such improvement and shall be paid from any state highway funds not otherwise appropriated, upon the certificate of the state highway commissioner to the auditor general: Provided further, That nothing in this section shall be so construed as vesting the state highway commissioner with authority in grade separation matters when proceedings are taken under and by virtue of act number ninety-two of the public acts of eighteen hundred ninety-three, as amended. Id., Chap. I, Sec. 27. § 4314. [See Form No. 108.]

Act 92, P. A. 1893, as amended (§ § 4750-82, C. L. 1915) above referred to, is entitled "An act to provide separate grades for railroads and public highways and streets where railroads intersect such highways and streets."

The law of 1881 which required the railroad company to construct and maintain highway crossings was adversely construed in People v. L. S. & M. S. Ry. Co., 52 / 277; this law was amended in 1883, requiring the same proceedings in obtaining the right of way as in other cases and allowing such companies just compensation for the land taken, but requiring such company, at its own expense, to open, construct and maintain such highway. This requirement was also unconstitutional in C. & G. T. Ry. Co. v. Hough, 61 / 507, as being in conflict with the provisions forbidding the taking of private property without just compensation. See also Grand Rapids v. G. R. & I. R. R. Co., 58 / 642, where it was held that the damages include the expense entailed by the crossing, and may involve outlays for making it safe. Where a new highway is opened across a railroad, the township and not the railroad company, is charged with the duty of keeping in safe condition for public travel that portion of the highway lying within the railroad right of way, but not being a part of the crossing itself nor of the approaches thereto.—Gage v. Twp. of Pittsfield, 120 / 437. See also Wetherbee v. Mich. Cen. R. Co., 122 / 1.

NOTE.—It was affirmed in People v. L. S. & M. Ry. Co., 52 / 278, that "the right of property to governmental protection does not depend upon whether its owner is a natural or artificial person;" this right seems to be recognized in the existing law in making the municipality laying out the road liable for all damages incurred thereby.

1491. Highways on State Line.—The commissioner of highways of any township of this State lying along the line of any other state shall, upon a petition of seven or more freeholders, as is provided in the first subdivision of section one of this chapter, have power, and it shall be his duty to meet with any officer or officers of such adjoining state intrusted with the power of laying out or discontinuing highways, and such commissioner may lay out, open and construct a highway of any width, which added to the width on the other side of the state line, will make a highway which shall not exceed four rods nor be less than three rods in width, and the same shall be surveyed and recorded as in other cases. Id., Chap. I, Sec. 28. § 4315.

1492. Payment for Surveys.—An itemized statement of the expenses of any survey authorized by this chapter, certified by the commissioner or proper city or village officer, may be presented to the board of the proper township, city or village at any meeting thereof, and the amount of such expenses, if allowed by such board, shall be paid from the general fund of the township, city or village, and a tax shall be spread to reimburse said fund. Id., Chap. I, Sec. 29. § 4316.

1493. When Highway May be Laid Out Less Than Four Rods Wide.—The commissioner of highways of any township may, in his discretion, but with the consent and approval of the township board of the township in which such highway is proposed to be established, duly entered of record, lay out a public highway in any case where it is deemed expedient, of any width less than four rods but not less than three rods, said highways to be of uniform width between points intersecting other highways. Id., Chap. I, Sec. 30. § 4317.

1494. Closing of Roads Under Construction or Repair.—The officials who may have in charge the work of constructing, improving or repairing roads in any county, good roads district or township in this State are hereby given authority to close any road or portion of any road, which is under process of construction, improvement or repair or upon which is located any bridge which is being constructed or repaired: Provided, That no road shall be deemed to be closed under the provisions of this act until suitable barriers have been erected at the ends of said road or of the closed portion thereof, and also at the point of intersection of such road or portion of highway with other roads. Said barriers shall be conspicuously marked at night by red lights. Act 165 of 1917, Sec. 1.

1495. Detours, Notices, Removal of Barriers, Etc.—No road shall be closed under the provisions of this act until suitable detours around the same, or the closed portion thereof, are provided and are placed in reasonably safe and passable condition for traffic. Notices in the form of plainly legible signs shall be placed by the highway officials having such work in charge at either end of the closed highway or portion of highway and at such intermediate points along the detour, or detours, as may be necessary to plainly mark the same. Upon the completion of the work of construction, improvement or repair and as soon as the road or bridge constructed, improved or repaired shall be in suitable condition for public travel, all barriers, marks and signs whatsoever erected under the provisions hereof shall be at once removed by the officials erecting or placing the same. Id., Sec. 2.

1496. Penalty.—Any highway official who shall neglect or refuse to provide suitable detours or to plainly mark the same or to remove barriers and signs as herein provided, or any person who wilfully enters upon the closed portion of any road or removes the barriers therefrom, or who removes, obliterates or defaces any sign or mark, or who extinguishes or removes any light placed or maintained hereunder, except by permission of the highway officials in charge, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than fifty dollars, or imprisonment in the county jail for not more than ninety days, or both such fine and imprisonment in the discretion of the court. Id., Sec. 3.

1497. Roads to Isolated Lands.—Owners of isolated lands, where the same are platted or subdivided into lots for residence purposes or lake resort homes and where said plat or subdivision shall have been duly recorded in the office of the register of deeds of the county wherein such lands are located, shall have the right to acquire in the same manner as provided by act 283 of 1909 (the General Highway Law), for the establishment, opening and maintenance of private or public roads, a roadway leading to the streets on said plat from the nearest public highway across the lands adjacent to said plat or subdivision by the most feasible route. Said roadway shall be not less than two rods wide and when so acquired may be dedicated to the public for use as a highway by the owner or owners of said plat or subdivision. The survey or conveyance showing title to said roadway shall be recorded in the office of the register of deeds of the county wherein said land lies. Act 172 of 1915. § 4861.

CHAPTER III.

TAXES FOR HIGHWAY PURPOSES.*

1498. Road Repair and Highway Improvement Taxes.—The highways in every organized township in this State shall be laid out, improved and maintained by two money taxes; one tax shall be known as the road repair tax, and shall be assessed on all property in the township outside of the limits of incorporated villages, which tax shall not exceed fifty cents on each one hundred dollars valuation according to the assessment roll of the last preceding year, except in townships with an assessed valuation of less than five hundred thousand dollars where the tax shall not exceed one dollar on each one hundred dollars valuation, according to the assessment roll of the last preceding year; and the other tax shall be known as the highway improvement tax and shall be assessed on all taxable property in the township, including that within the limits of incorporated villages, which tax shall not exceed fifty cents on each one hundred dollars valuation, according to the assessment roll for the last preceding year, except in townships with an assessed valuation of less than five hundred thousand dollars where the tax shall not exceed one dollar on each one hundred dollars valuation, according to the assess-

*Sec. 34 of Act 302 of 1915 provides that fifty per cent of the amount collected from the registered motor vehicles in each county shall be returned to the treasurer of each county, to be used to maintain the highways by the local authorities: Provided, That in counties not operating under the county road system, the board of supervisors shall apportion such tax received to the several townships and cities according to the assessed valuation thereof, to be used by such townships and cities for the construction and maintenance of the highways.

ment roll of the last preceding year. Act 283 of 1909, Chap. II, Sec. 1. § 4318, as Am. by Act 45 of 1917.

See also Sections 1501 and 1502 of this Guide.
Pearl v. Benton Twp., 136 / 697; Perrizo v. Stephenson Twp., 141 / 167.

1499. Commissioner's Annual Account.—The commissioner of highways in each township shall render to the township board at the annual meeting thereof in each year an account in writing, stating:

First, The amount of road repair tax received by him during the preceding year, a summary of the expenditures from that fund, the amount of outstanding liabilities, if any, and the amount of such road repair fund, if any, over and above such expenditures and liabilities;

Second, The amount of highway improvement tax received by him during the preceding year, a summary of the expenditures from that fund, a statement of the permanent improvements made on roads and bridges and of the condition of the roads and bridges so improved, the amount of outstanding liabilities, if any, and the amount of the highway improvement fund, if any, over and above such expenditures and liabilities;

Third, The amount of all other moneys received for highway purposes with a statement of the application thereof;

Fourth, An estimate of the amount of road repair tax which, in his judgment, should be assessed for the ensuing year, not exceeding the amount named in section one of this chapter;

Fifth, The permanent improvements which, in his judgment, should be made on the roads and bridges during the next ensuing year and the amount of highway improvement tax which should be levied for that purpose, not to exceed the amount named in section one of this chapter. Id., Chap. II, Sec. 2. § 4319. [See Form No. 109.]

ANNUAL ACCOUNT: The report of the commissioner, in the absence of evidence to the contrary, will be assumed to be in due form.—Lake Superior Ship Canal Co. v. Thompson Township, 56 / 493. The report should not call for a greater appropriation than authorized by the statute.—Hosier v. Higgins Township, 45 / 342. For neglect of commissioner to report, see Thayer Lumber Co. v. Twp. of Springfield, 131 / 14.

ASSESSMENT: The assessment of highway taxes for roads that are in contemplation, but are not yet laid out, is not necessarily illegal.—Sawyer-Goodwin Co. v. Township of Crystal Falls, 56 / 597. A special highway tax exceeding the amount allowed by law, and assessed for a highway not legally laid out, and without any showing in the township records that it had been voted, is void.—F. & P. M. Ry. Co. v. Auditor General, 41 / 635. The money tax authorized to be raised for highway purposes should be spread according to the assessed valuation of the preceding year.—Mills v. Richland Twp., 72 / 100.

See Longyear v. Auditor General, 72 / 415; Peninsular Savings Bank v. Ward, 118 / 87; Diamond Match Co. v. Ontonagon, 140 / 185; Perrizo v. Stephenson Twp., 141 / 170.

As to the report of highway commissioner relative to the drainage of highways, see Section 1681 of this Guide.

1500. Statement to be Presented at Town Meeting.—The township board shall cause such statement to be presented at the next annual township meeting, but a failure to render such statement or to present the same to the township meeting shall not affect the right of the electors of the township to vote at such meeting the amount of road repair tax and road improvement tax to be assessed, or of the township board to fix and determine the same as provided elsewhere in this act. Id., Chap. II, Sec. 3. § 4320.

HIGHWAY TAXES: The labor and money tax which the electors of a township are authorized to vote is not intended to meet anything but the ordinary improvement of the highways and bridges of the township during the year.—Longyear v. Auditor General, 72 / 415; Michigan Land and Iron Co. v. L'Anse Township, 63 / 700. The failure of the commissioner of highways to estimate and report the amount of money to be raised for highway purposes will not deprive the electors of the right to vote upon that question.—Turnbull v. Township of Alpena, 74 / 621. For amount of tax to be voted as authorized by statute, see Peninsular Sav. Bank v. Ward, 118 / 87. Neglect of electors to vote a money tax for highway purposes.—Thayer Lumber Co. v. Springfield Twp., 131 / 15. See McFarlan v. Cedar Creek Twp., 93 / 558.

1501. Amount of Taxes to be Determined at Town Meeting.—At the annual township meeting held in each organized township the electors shall, by a majority of those present and voting, who do not reside in any incorporated village, determine the amount of road repair tax to be raised for the ensuing year, and at the said meeting the electors shall also, by a majority of all those present and voting, including residents of incorporated villages in such organized township, determine the amount of highway improvement tax to be raised for the ensuing year. Id., Chap. II, Sec. 4. § 4321.

1502. When Commissioner and Board May Order Highway Tax Levy.—If the electors present at any annual township meeting shall neglect or refuse to vote any road repair tax or highway improvement tax, the township board and the township highway commissioner, acting jointly, shall order to be levied such a sum or sums, for either or both of these funds, as may appear to them necessary and advisable, not to exceed the amounts named in section one of this chapter. Id., Chap. II, Sec. 5. § 4322. [See Form No. 11.]

TAX LEVY: Where the township board imposes a highway tax they represent the town meeting in doing so and are confined to the same subjects of taxation.—Ryerson v. Township of Laketon, 52 / 510. The records of the board must affirmatively show neglect or refusal of the voters to vote a sufficient sum for township expenses.—Harding v. Bader, 75 / 316; Gamble v. Aud. Gen., 78 / 302; Aud. Gen. v. D., S. S. & A. R. Co., 116 / 122; Aud. Gen. v. Sparrow, 122 / 593. See also Thayer Lumber Co. v. Springfield Twp., 131 / 13. Where the township board in levying highway taxes, exempts the property in a particular village in the township, the levy is void.—Aud. Gen. v. D., S. S. & A. R. Co., 116 / 122. See Perrizo v. Stephenson Twp., 141 / 167.

1503. Highway Taxes Levied and Collected as are Other Taxes.—A certified copy of the record of the proceedings of the township meeting or township board, fixing and determining the amount of such highway taxes, shall be transmitted by the township clerk to the supervisor of his township on or before the first day of October in each year and such taxes shall be levied and collected in the same manner as moneys for general township purposes are levied and collected. The taxes so levied shall be carried out in two separate columns in the tax roll, one as the road repair tax and the other as the highway improvement tax, and the township treasurer shall keep separate accounts of the same. Id., Chap. II, Sec. 6. § 4323.

1504. May Borrow in Anticipation of Tax.—When the amount of either or both of said taxes shall have been determined by the township meeting or the township board, the township board shall have the power and authority to borrow an amount not exceeding three-fourths of the tax determined upon for the ensuing year, for the purpose of paying for labor, material, tools or machinery, or other expenses in connection with the laying out, building, repairing or improving of highways and bridges of the township, and the interest on any moneys so borrowed shall be paid from the road fund for which the money was borrowed. Id., Chap. II, Sec. 7. § 4324.

1505. Limit of Exigency Expenses.—Whenever in the opinion of the highway commissioner and township board, an exigency shall be deemed to exist requiring the repairing, building or rebuilding of any road or bridge, the township board may authorize the highway commissioner to repair, build or rebuild such road or bridge, at a cost not exceeding one thousand dollars, and shall order a tax spread to meet the same. Id., Chap. II, Sec. 8. § 4325.

1506. Expenditure of Road Repair Tax.—The commissioner, acting with the township board, may divide the township into one or more road districts in each surveyed township, in each of which districts an overseer of highways shall be elected: Provided, That the repair tax shall be expended or worked in the road district where assessed. The commissioner and township board of any township in which may be located an unincorporated village, or in the event that such unincorporated village is located in more than one township, the commissioners and township boards of the townships to be affected thereby, may create of the territory embraced by such unincorporated village a separate road district, for which road district there shall be elected an overseer in the same manner as other overseers are elected in the township. And in case such unincorporated village is located in more than one township the overseer of each township shall have supervision over that territory embraced in such unincorporated village as may be located in his township. Such overseers shall from time to time report to the commissioner any defects in the highways within their respective districts, and shall, when required by the commissioner, supervise the working and repairing of roads, and the building and repairing of roads, and the building and repairing of bridges therein. The overseer or overseers of any road district comprised of an unincorporated village as in this section provided, may, upon the written application of a majority of the taxpayers residing therein, authorize not less than one-fourth and such additional part of the road repair tax assessed therein, and not necessary for the repairs of highways therein, and not necessary for the direction of the overseer or overseers of such district in the construction, repairs and improvements of sidewalks within the limits of such unincorporated village; and for such purpose said overseer or overseers, when such unincorporated village may be located in more than one county, may also from time to time, by writing signed by him or them and filed with the clerk of such township or townships, authorize such additional portion of the repair tax of such village as in his or their judgment is not needed for the annual repairs of the highways therein, to be anticipated for one or more years, not exceeding three, and thereupon any person or corporation, resident of or owning property within such village, and assessed for highway repair tax in the district within which such district is situated, may, in the year so designated in such order, anticipate his, her or its assessment for road repair tax for such time as he, she or it may see fit within the limits so prescribed by the overseer of that part of the road district in which such repairs shall be made, and it shall be the duty of such overseer to give to such person or corporation a certificate signed by him, showing the amount of road repair tax paid by such person or corporation; and in each succeeding year, upon presentation of such certificate, such person or corporation shall be allowed and credited by the overseer of highways of that part of the district in which such repairs or the construction of sidewalks shall have been made, with the payment of the road repair tax so assessed to him, her or it for such year, until such credit shall equal the amount of the road repair tax so stated in said certificate to have been anticipated, and such overseer shall endorse thereon a statement signed by him showing such credit or allowance. The supervision of road work and the repair of highways and bridges shall be under the charge of the overseers, subject to such

directory control of the township board and highway commissioner as is herein prescribed: Provided further, That upon complaint in writing to the township board by any ten or more resident taxpayers that the road repair fund is being unequally and unjustly applied, or work improperly performed, the township board may direct the expenditures of such road repair fund or the manner of performing such work: Provided further, That not to exceed twenty-five dollars shall be expended by the highway commissioner in any one year for tools or machinery, without the consent of the township board: Provided further, That not exceeding one hundred dollars shall be expended from the road repair fund on any one mile of highway; unless otherwise directed by the township board. Id., Chap. II, Sec. 9. § 4326.

1507. Expenditure of Highway Improvement Fund.—The highway improvement fund shall be expended by the township highway commissioner, under the direction of the township board, in laying out, building and permanently improving or repairing highways and bridges and in the employment of labor, purchasing of materials, tools or machinery to be used therefor. The commissioner of highways, under the direction of the township board, may contract for such tools or road machinery as they may deem advisable, to be paid for in not to exceed four years' time, but in no one year shall the payment made thereon exceed one-fourth the amount of the allowable highway improvement tax: Provided, That one-half of that portion of the township highway improvement fund tax which is assessed and collected within any incorporated village, or part thereof, shall annually be expended within the township where collected by the highway commissioner under the direction of the township board and common council of such village, for building, permanently improving or repairing of the highways and bridges now in use in such village which were established and laid out before the incorporation of such village; and the township board shall collect and turn over to such village all state award moneys that may be due or owing on account of such building, permanently improving or repairing the highways within the village in accordance herewith. Id., Chap. II, Sec. 10. § 4327, as Am. by Act 332 of 1917.

See Power v. Gray, 186 / 651.

1508. Highways and Bridges to be Kept in Reasonable Repair.—It shall be the duty of the highway commissioner to see that all highways and bridges are kept in reasonable repair, and in condition reasonably safe and fit for public travel. He shall employ and direct the employment of such labor as he may deem necessary and advisable, and all disbursements from the highway improvement fund or the road repair fund shall be made upon his warrant, drawn on the township treasurer and countersigned by the township clerk.

See Act No. 357 of 1913, (§ 4748, C. L. 1915), being Section 1442 of this Guide.

1509. Persons Assessed Given Preference in Performance of Work.—In the performance of all road repair work those assessed for highway taxes in each respective district where such work is to be done, shall be given preference in the performance of such work. Work to be paid for from the road repair fund shall be completed on or before the first day of September in each year: Provided, That not exceeding one-

quarter of the amount of such tax may be kept by the highway commissioner for later necessary repairs, or for plowing, rolling or removing snow in winter. Id., Chap. II, Sec. 12. § 4329.

1510. When Overseer to Have Supervision of Work.—If the highway commissioner be unable to take charge of the work on highways and bridges because of sickness, absence or any other reason, or in case of a vacancy in the office of township highway commissioner through death, resignation or otherwise, the overseer of highways residing in the same road district as the former highway commissioner resided shall have charge and supervision of all work, and shall act in the place and stead of the highway commissioner, until a new highway commissioner shall be appointed or elected, and shall have all the powers and duties of such township highway commissioner, and in such case warrants drawn by him and countersigned by the township clerk shall be paid by the township treasurer. Id., Chap. II, Sec. 13. § 4330.

1511. Compensation of Commissioner and Overseer.—The township highway commissioner and the overseer of highways shall be entitled to such compensation as the township board shall decide. The compensation of the highway commissioner shall be paid from the general fund of the township, in the same manner as other township officers are paid. The compensation of the overseer of highways shall be paid from the road repair fund, on approval of the township board. Id., Chap. II, Sec. 14. § 4331.

See Section 282 of this Guide.

1512. Work, Except Repairs, Shall Have in View Permanent Improvement.—All work hereafter done upon roads and bridges, except such work as may be required for repairs, shall have in view the permanent improvement of such roads and bridges. Before beginning such permanent improvement on any highway or bridge, the commissioner shall cause a survey of the highway to be made by a competent surveyor or engineer, who shall prepare complete plans for the work contemplated establishing both the location and grade of the highway or bridge. In counties working under the county road system the county highway engineer shall be employed for this purpose and he shall exercise such supervision over construction as will insure that the plans and specifications are strictly followed. No contracts shall be let nor work paid for which shall cost to exceed five hundred dollars, whether bridges or road work, without the approval of said county highway engineer. In counties not working under the county road system any competent engineer or surveyor may be employed, but if any highway is being built for state reward, the employment of such engineer or surveyor shall be approved by the state highway commissioner. The plans as submitted, or as may be amended by the surveyor or engineer at the suggestion of the board, shall be adopted by resolution of such township board, which fact shall be certified by the township clerk on the plans, giving the date of such adoption, after which they shall be filed with the township clerk, and copies thereof shall be filed with the township treasurer. Thereafter all parts of such roads shall be graded and turnpiked in accordance with the grades thus established before the same shall be graveled or macadamized, and it shall be unlawful for the highway commissioner to

issue any orders for permanent improvement work, for the township clerk to countersign such orders, or the treasurer to pay same, unless the survey has been made, the plans made and adopted, and the work done in accordance therewith, and any one of the officials, who shall do what is prohibited in this paragraph knowingly, shall be guilty of a misdemeanor and shall be liable to a fine of not more than twenty-five dollars, and in default of payment may be confined in the county jail not more than twenty-five days, in the discretion of the court. The highway shall be constructed in such manner as to form a turnpike sufficiently crowning to shed water, with gutters or ditches adequate for drainage. The width of the turnpike shall be not less than eighteen feet between side ditches and all bridges shall have a clear roadway of at least sixteen feet, and shall be capable of carrying a fifteen ton moving load. Id., Chap. II, Sec. 15. § 4332, as Am. by Act 68 of 1917.

1513. Repairs After One Year.—After any such turnpike shall be used for one year, the ruts shall be filled, after which it shall be graveled or macadamized in cases where gravel or crushed stone can conveniently be obtained. If it be desired to put on gravel or stone when grading has been completed, the turnpike shall first be thoroughly compacted. In graveling or macadamizing any highway, the gravel or stone shall be placed on the center thereof, in a mass not less than nine feet wide, and not less than six nor more than twelve inches deep, in the discretion of the highway commissioner. Id., Chap. II, Sec. 16. § 4333.

1514. Continuation of Work.—The work specified in sections fifteen and sixteen of this chapter shall be continued until all the highways in the township are made equal to the requirements of said sections. Id., Chap. II, Sec. 17. § 4334.

1515. Improvements at Owner's Expense.—Whenever any person or persons interested in any highway, wish to improve the same by grading, graveling, macadamizing or paving they may do so at their own expense, and in such manner as may be approved by the highway commissioner; and when sufficient means shall be provided by such party or parties to make the improvement desired, the highway commissioner shall furnish a grade for such highway and direct the manner in which it shall be graded, and his per diem while so employed shall be paid by the township as though the township were making the improvement. The highway commissioner shall, if requested to do so by the party or parties making the improvement, supervise and direct the graveling, macadamizing or paving, and his per diem while so employed shall be paid by the township as though the township were making the improvement: Provided, That no highway commissioner or any other town officer shall be awarded any contract for any labor to be performed under the provisions of this act, and any such contract, so awarded, shall be void. Id., Chap. II, Sec. 18. § 4335.

1516. Taking of Materials for Improvements.—Materials for making improvements under any provision of this act, may be taken from any property set aside for highway purposes in the township: Provided, however, That no such materials shall be taken within eight feet of either line of the highway, except where necessary to maintain the established grade, without the consent of the owner of the adjoining land. Id., Chap. II, Sec. 19. § 4336.

CHAPTER IV.

GOOD ROADS DISTRICT.

1517. Formation and Dissolution of Good Roads Districts.—Any two or more organized townships, or any one or more townships, and one or more villages, or one or more townships and one or more cities, or any combination of townships, villages or cities lying contiguous in any county, are hereby authorized to form themselves into a district to be known as a good roads district, and such district shall operate under the provisions of the county road law, except as herein otherwise provided; but should any county in which a good roads district be formed, afterwards adopt the county road system, such good roads district shall be thereby dissolved excepting for the purpose of completing work then under contract, or for the payment of any bonds that may have been issued, by the return to the district of all moneys assessed in said district for county road taxes when working under the county road system, until all bonds issued by said district are retired. In case such district shall become so dissolved and come under the county road system, any funds of the good roads district remaining in the county treasury, or thereafter paid therein, to the credit of such good roads district fund shall be returned to the highway funds of the different townships, villages and cities composing such good roads district in the proportion in which the good roads district tax was paid by them for the last preceding year. Act 283 of 1909, Chap. III, Sec. 1. § 4337.

See Sections of this Guide legalizing certain good road bonds.

1518. Proceedings for Joining in Good Roads District.—On petition of not less than ten per centum of the resident freeholders of each organized township, incorporated village and city as shown by the tax rolls of the preceding year, which is desirous of joining in a good roads district, the board of supervisors may submit the question of adopting such system, to a vote of the electors of such townships, villages and cities, so petitioning, not later than at the next general election. Such vote may be taken at a special election called for that purpose, or at a general election, and the following form or resolution shall be sufficient for submitting the question, viz: Resolved, That the question of adopting the good roads district system be submitted to a vote of the electors of the (townships of....., villages of ..... cities of .....) of the county of ..... at (the general or special election) to be held on the ..... day of ..... nineteen hundred ..... If a special election is to be called, a clause added to the resolution in form following shall be sufficient for that purpose, viz.: And a special election is hereby called to be held in the several townships and wards of said county as above set forth, on the day last aforesaid, for the purpose of taking such vote. Id., Chap. III, Sec. 2. § 4338.

1519. Election to Vote on Question of Forming District.—After the adoption of the resolution by the board of supervisors, the county clerk shall give notice thereof to the several townships, incorporated villages and cities petitioning to form such district, as shown by the tax roll of the preceding year, in the form of a handbill to be posted in three or more

public places in each township and ward, at least two weeks before the time of such election, and by publication in a newspaper or newspapers having a general circulation throughout such district. Ballots shall be prepared and distributed by the same officers as is provided by law for general elections. At the time mentioned in such resolution such election shall be held and the vote taken accordingly: Provided, That no township, village or city, not petitioning to form and become a part of such road district, shall vote upon the question of adopting such system. Id., Chap. III, Sec. 3. § 4339.

1520. Majority Vote Adopts Good Roads System.—If upon the canvass of the votes cast on such question at such election, it shall appear that a majority voting thereon, is in favor thereof, then the good roads system shall be considered as adopted in such district, and thereupon the provisions of this act and of the county road law, shall be and become operative in such district. Id., Chap. III, Sec. 4. § 4340.

1521. Board of Good Roads Commissioners.—In each township, incorporated village and city belonging to such district, shall be elected one good roads commissioner, which commissioners shall constitute a board of good roads commissioners, who will have the same rights, powers, obligations and duties in the good roads district as county road commissioners under the county road law. The terms of office of such good roads commissioners shall be two years, and their compensation shall be fixed by the board of supervisors. In the first instance, or in case of a vacancy in the office of any good roads commissioner, such office shall be filled by appointment by the township board, village or city council, as the case may be. The board of good roads commissioners so constituted may adopt such rules and regulations for calling and holding meetings and for the transaction of business as they may deem best. They shall annually appoint one of their number chairman to hold during the pleasure of the board. The board of good roads commissioners shall act as an administrative board only and they shall appoint a competent superintendent, skilled in road building, who may or may not be an engineer, who shall direct all road building operations in the district. All orders drawn upon the district treasurer shall be countersigned by such superintendent or engineer. The county clerk and county treasurer shall officiate the same for the district so formed as is provided by law in case of the adoption of the county road system. The county clerk may deputize the superintendent or engineer to act as clerk for the board of good roads commissioners. Id., Chap. III, Sec. 5. § 4341, as Am. by Act 268 of 1917.

1522. Proceedings to Become Part of District.—In any county in which a good roads district may be formed it shall be the privilege of any organized township, incorporated village or city, lying contiguous to but not already belonging to such good roads district, to become a part of the same whenever such township, village or city shall so decide by a majority vote of the electors of such township, village or city, voting thereon, at a general or special election: Provided, That such township, village or city shall not become a part of such good roads district until the question has been approved by a majority vote of the electors of such district. Upon petition of at least ten per centum of the resident freeholders residing in any such township, village or city as shown by the tax rolls

of the preceding year, it shall be the duty of the township board, village or city council, as the case may be, to provide for the holding of such election, at a date not later than the next general election. Id., Chap. III, Sec. 6. § 4342, as Am. by Act 268 of 1917.

1523. Determination of Amount of Tax.—On or before the first day of October of each year, the said board of good roads commissioners shall determine upon the amount of tax which, in their judgment, shall be raised for such year in the district, which tax shall not exceed three dollars upon each one thousand dollars valuation of said district, according to the assessment roll of the last preceding year. At the annual meeting of the board of supervisors held in October, the county clerk shall lay such determination before the board of supervisors and the board of supervisors shall pass upon the said determination and decide upon the amount to be raised, which shall not be less than that determined upon by the said board of good roads commissioners, excepting by a two-thirds vote of the members elect of said board of supervisors. After the said board of supervisors shall have decided upon the amount of tax to be raised, the said board of supervisors shall apportion such tax between the several districts, villages and cities of said good roads district, according to their assessed valuation. The supervisors or other assessing officers shall levy and apportion the tax so apportioned to their respective townships, villages and cities, upon the tax rolls of such townships, villages and cities. The tax so assessed shall be collected and paid to the county treasurer to be by him kept in a separate account and to be paid out only upon the order of said board of good roads commissioners, signed by its chairman and countersigned by the clerk. All moneys belonging to the good roads district shall be expended by the good roads commissioners in the said good roads district exclusively for the purposes mentioned, and provided for under the county road law. Id., Chap. III, Sec. 7. § 4343.

1524. Adoption of County Road System Dissolves Good Roads Districts.—No portion of any county now under the provisions of the county road law shall adopt the provisions of this act, and should any county in which a good roads district be formed, afterwards adopt the county road system, such good roads district shall be forthwith dissolved, excepting for the purpose of completing work then under contract. Any funds remaining in the county treasury, or thereafter paid therein, to the credit of the good roads district fund shall be returned to the highway funds of the different townships, villages and cities composing such good roads district in the proportion in which the good roads district tax was paid by them for the last preceding year. Id., Chap. III, Sec. 8. § 4344.

1525. Submission of Question of Abolishing Good Roads Districts.—The board of supervisors of any county which has adopted or may hereafter adopt the provisions of this act shall, upon petition of at least ten per centum of the resident freeholders residing in each of the several townships, incorporated villages and cities in the district as shown by the tax rolls of the preceding year, submit the question of rescinding the vote by which it was adopted, and the resolution to submit, and all proceedings subsequent thereto, shall, as nearly as may be, follow the forms and manner of proceedings provided for voting on the question of adopting the county road system. When any district shall rescind the vote by

which it has adopted the good roads district system, this act shall cease to be operative except for the purpose of completing work under contract at the time of such rescission. The funds then remaining in the county treasury or thereafter paid therein to the credit of the district shall be returned to the highway funds as provided in the preceding section. All district roads shall revert to the townships, and all highways and bridges shall thereafter be laid out, built and maintained in all respects as though such district had never adopted the good roads district system: Provided, That parts of townships may exercise the same rights as townships in chapter three of this act: Provided further, That the good roads commissioner who represents a part of a township shall be a resident of the district which he serves, and shall be elected at the annual town meeting, in the same manner as overseers of road districts are now elected. Id., Chap. III, Sec. 9. § 4345.

1526. Issue of Bonds by Good Roads Districts.—Whenever the board of supervisors of the county, by a majority vote of all the members-elect, resolves to contract indebtedness or issue bonds to raise money for the construction and maintenance of district county roads, the question shall be submitted to a vote of the electors of the district at a general or a special election called for that purpose. Notice of the submission of such resolution to a vote of the electors and, in case a special election is called, notice of the calling of such special election shall be given in the same manner and for the same length of time as now prescribed by law. If a majority of the electors voting on such resolution shall vote in favor thereof, it shall be deemed to have carried. The manner of stating the question upon the ballots shall be prescribed by the resolution of the board of supervisors. No bond or evidence of indebtedness shall be negotiated at less than par and the accrued interest. All money raised by the board of supervisors for the construction and maintenance of district county roads shall be expended under the direction of the board of district road commissioners. Such action shall not be taken by the board of supervisors, except upon the petition of ten per centum of the resident freeholders of each of the several municipalities comprising such good roads district. Id., Chap. III, Sec. 10. § 4346.

CHAPTER V.

COUNTY ROAD LAW.

1527. Submission of Question of Adopting County Road System.—On petition of not less than ten per centum of the resident freeholders residing in each of the several organized townships, incorporated villages and cities, of any county, as shown by the tax roll of the preceding year, or upon a majority vote of the members of the board of supervisors, the board of supervisors of such county may submit the question of adopting the county road system to a vote of the electors of such county. The said board of supervisors may submit the question at a general or special election called for that purpose. The following form of resolution shall be sufficient for submitting the question, viz.: Resolved, That the question of adopting the county road system be submitted to a vote of the electors of the county of ..... at (the general or special election) to be held on the ..... day of ....., nineteen hundred .....

If a special election is to be called, a clause added to the resolution in form following shall be sufficient for that purpose, viz.: And a special election is hereby called to be held in the several townships and wards of said county on the day last aforesaid, for the purpose of taking such vote. Act 283 of 1909, Chap. IV, Sec. 1. § 4347.

Constitutional law, see Wayne County Road Com'rs v. Auditors, 148 / 255. The passage of this act, providing for the county road system, was not intended to make counties that adopt the system liable for defects in sidewalks situated in an unincorporated village.—Ferguson v. County of Muskegon, 181 / 335.

See Section 1801 of this Guide relative to the county road act of 1917 (Act 305 of 1917), applicable to Houghton, Kent, Saginaw and Wayne counties.

1528. Form of Notice of Election.—At least three weeks shall intervene between the adoption of the resolution by the board of supervisors and the time of holding such election. After the adoption of the resolution by the board of supervisors, the county clerk shall give notice thereof. Such notice shall be addressed to the electors of the county and shall set forth the action of the board of supervisors together with a copy of the resolution, and shall further give notice that said question will be stated upon the ballot to be used at said election, as follows: Shall the county road system be adopted by the county of .....? Said notice may be in the form following, viz.:

To the electors of the county of .....:

Notice is hereby given that at a meeting of the board of supervisors of said county, held on the ..... day of ....., 19...., the following resolution was adopted, viz.: (here set forth the resolution).

Notice is further given that said question will be stated on the ballots to be used at said election, as follows: Shall the county road system be adopted by the county of .....?

Dated .....

.....

Clerk of the county of .....

Id., Chap. IV, Sec. 2. § 4348.

1529. Posting and Publication of Notice; Form of Ballots.—Said clerk shall cause such notice, printed in the form of a handbill, to be posted in three or more public places in each township and ward of such county, at least two weeks before the time of such election, and also to be published in such newspaper or newspapers published and circulated in said county as the board of supervisors may direct, once in each week for at least two weeks before said election. Proof of the posting and publication of such notice may be made by affidavit of any person or persons knowing the facts and be filed in the office of said clerk and shall be recorded in the records of the proceedings of the board of supervisors. Such affidavit or the record thereof, or a certified copy of such affidavit or the record thereof, shall be prima facie evidence of the facts stated therein. Ballots shall be prepared and distributed by the same officers prescribed by law for general elections. The questions shall be stated on such ballots as follows, viz.: Shall the county road system be adopted by the county of .....? and immediately below and on different lines shall be printed the word "yes" and the word "no." At the time mentioned in such resolution such election shall be held and the vote taken accordingly. Id., Chap. IV, Sec. 3. § 4349.

1530. Adoption of County Road System.—If upon the canvass of the votes cast at such election it shall appear that the majority is in favor of

the adoption thereof, then the county road system shall be considered as adopted in such county, and thereupon the provisions of this act and all other acts relative to such system shall be and become operative in such county. Id., Chap. IV, Sec. 4. § 4350.

1531. Conduct of Elections.—In all elections held under this act the manner of preparing and distributing the ballots, the manner of conducting, canvassing, returning and declaring the result, shall be the same as now prescribed by law for other like county elections, except as herein otherwise provided. Id., Chap. IV, Sec. 5. § 4351.

1532. Board of County Road Commissioners.—In any county where the county road system has been or shall hereafter be adopted, a board of county road commissioners consisting of three members shall be elected by the people of such county. In the first instance such commissioners shall be appointed by the board of supervisors or elected at a general or special election called for that purpose, as shall be ordered by the board of supervisors. If such commissioners are appointed they shall hold office only until the first day of January in the year in which the next regular session of the legislature is held. If such commissioners are to be elected at a general election, notice thereof, embodying a copy of the resolutions of the board of supervisors, giving the number and terms of the office of the commissioners to be elected, shall be published by the clerk in the newspaper or newspapers selected by the board of supervisors as required by section three of this chapter and act; if a special election is called for the election of such commissioners, a like notice shall be given by the clerk, which notice shall be posted and published in such newspapers as required by said section three of this chapter and act. The regular election of county road commissioners shall be held at the general election on the first Tuesday after the first Monday in November, and the term of office of such county road commissioners shall commence on the first day of January in the year following their election. The notice thereof shall be given at the time notice is given of the general election of county officers: Provided, That the election of county road commissioners, as herein provided, shall not be mandatory in any county which contains twelve surveyed townships or more, either entire or fractional as determined by the government survey thereof. In such county or counties the board of supervisors may, by a majority of its members-elect, appoint such county road commissioners: Provided further, That in any county in which the board of road commissioners shall consist, at the time this amendment takes effect, of less than three members, the board of supervisors, at the first regular meeting thereafter, or at a special meeting called for that purpose, shall appoint such additional members as may be necessary. At the time of such appointment the board of supervisors shall designate the date of expiration of the initial term of each commissioner so appointed, so that the term of a commissioner shall expire on the thirty-first day of December of each even year. Id., Chap. IV, Sec. 6. § 4352, as Am. by Act 356 of 1917.

1533. Qualification, Term of Office and Eligibility.—Any person elected or appointed county road commissioner shall, within ten days after being notified in writing by the clerk of such county of his election or appointment, take and subscribe the constitutional oath of office and

file the same with said clerk. Each and every county road commissioner shall be required to execute and give official bond in such amount as the board of supervisors of such county may determine, the expense of securing such bond, if any, to be paid from the county road fund. The term of office of the first commissioners elected or appointed in any county under this act, shall commence immediately upon filing such oath of office and bond, and shall continue as herein provided. The successor to each such commissioner shall be elected at the general election on the first Tuesday after the first Monday in November preceding the expiration of his term. They shall hold office for two, four and six years respectively, from the said first day of January; and thereafter one commissioner shall be elected or appointed biennially for the full term of six years. No member of the board of supervisors shall be eligible to the office of county road commissioner, and such offices shall not be held by the same person at the same time. Id., Chap. IV, Sec. 7. § 4353, as Am. by Act 356 of 1917.

1534. Vacancies.—In case a vacancy shall occur in the office of county road commissioner, the board of supervisors may appoint a commissioner to fill such vacancy, who shall hold office for the unexpired portion of the term in which the vacancy occurs. Each commissioner shall hold his office until his successor is elected and qualified. The board of supervisors shall fix the compensation of such commissioners, except in the county of Wayne where the compensation shall be five dollars per diem, for such time as the commissioners shall serve the county in the capacity of county road commissioners. Id., Chap. IV, Sec. 8. § 4354.

Under this section the board may employ superintendents, engineers and others and buy proper machinery, tools and materials for the purpose of carrying out their work, and this power may be exercised wholly or partly when contracts for road building are let, or when bids have been rejected and work entered upon by day labor.—Brandt v. Luce, 177 / 184.

1535. Powers of Board.—A majority of the members of the board of county road commissioners shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. The board may adopt such rules and regulations for calling and holding meetings and for the transaction of business as they may deem best. They shall annually appoint one of their number chairman to hold during the pleasure of the board. The board of county road commissioners shall act as an administrative board only: Provided, however, That nothing in this act shall interfere with the work of commissioners during their present term of office. They shall appoint a competent superintendent, skilled in road building, who may or may not be an engineer who shall under the direction of the board supervise all road building operations in the county. Such board shall be known as the board of county road commissioners of the county of ....., and by that name may sue and be sued. Process may be served on the chairman or clerk of the board. The clerk of the county shall be clerk of the board of county road commissioners, and shall keep the records and accounts of the board, and preserve its files in the manner directed by the board. Id., Chap. IV, Sec. 9. § 4355, as Am. by Act 356 of 1917.

1536. Contracts; County Highway Engineer.—Neither the clerk nor any member of the board of county road commissioners shall, directly or indirectly, either personally or as a member of any firm or stockholder in any corporation, be pecuniarily interested as contractor or

employe in any contract entered into or work carried on by or for such board or in property purchased or sold by or for such board: Provided, however, That this section shall not be construed to prevent the purchase of land for a road, from a member of the board or the clerk thereof. Said board of commissioners shall employ a competent county highway engineer who shall make all surveys ordered by the board, prepare plans and specifications for all roads, bridges and culverts, and exercise such general supervision over all construction as will insure that the plans and specifications are strictly followed: Provided, however, That two or more adjoining counties may employ the same engineer, if the work in one or more of such counties is not enough to employ the whole time of such engineer. Said board may also employ such other servants and laborers as may be necessary, and may purchase such machines, tools, appliances and materials as shall in its judgment be necessary or convenient for the proper carrying on of their work. The engineer employed by said board shall be officially known as the county highway engineer. Id., Chap. IV, Sec. 10. § 4356.

1537. Laying Out Roads and Taking Private Property.—Said board of county road commissioners may lay out such new roads within the county as they deem necessary. Such roads shall be not less than four rods wide. Said board may also change the width or the location or straighten the line of any road over which they take jurisdiction. If in the laying out, widening, changing or straightening of any road, it shall become necessary to take private property, the said board shall cause a survey of such proposed road to be made, together with an accurate description of the lands required therefor. Thereupon they shall endeavor to agree with each owner, resident of said county, for the purchase of a right of way over his land included within such description. If they are able to agree with the owner thereof, they may purchase the same and pay therefor out of the funds under their control, and such lands shall then be conveyed to the county for the use and purpose of a road. Id., Chap. IV, Sec. 11. § 4357.

Wayne County Road Com'rs v. Auditors, 148 / 261.

1538. Proceedings When Commissioners and Owner Cannot Agree.—Whenever said board shall be unable to agree with any person interested in any parcel of such land, or such person shall be unknown or a nonresident of the county, or a minor, or an insane or incompetent person, the board may present to the circuit court or probate court of the county a petition, describing the proposed road and each parcel of land necessary therefor which they have been unable to acquire, giving the name of each person interested in each parcel so far as known, and praying for the appointment of three commissioners to determine the necessity of such proposed road, the necessity of taking each such parcel therefor, and to appraise the damages to be paid as compensation for such taking of each parcel for road purposes. The court shall appoint a guardian ad litem for any minor, insane or incompetent person interested in the proceedings. The guardian shall be a resident of the county. Upon the filing of the petition, the court shall make an order fixing a day for the hearing on such petition, which shall be not less than three weeks thereafter. Such order shall recite the names of the persons men-

tioned in the petition, the descriptions of each parcel of land, and state the purpose of the petition. Such order shall be published once in each week for three successive weeks in some newspaper published and circulated in the county as near as any to the land in question, to be designated by the court, and notice thereof shall be served on each person named in the petition interested in the land who resides within the county, and upon each such guardian, at least ten days before the day of hearing. Such service may be made personally or by leaving at the place of residence of the person to be served. Proof of publication and service may be made by affidavit of any person or persons having knowledge of the facts. Such proof shall be filed with the court on the day of hearing, and thereupon the court shall have jurisdiction of the subject matter involved in the proceedings and of the parties interested therein. Id., Chap. IV, Sec. 12. § 4358.

1539. **Court Commissioners to Determine Necessity for Road.**—On the day of hearing, the court shall hear the parties and appoint three disinterested persons commissioners, herein called court commissioners, whose duty it shall be to determine the necessity of such proposed road and the necessity for taking each parcel of land described in the petition therefor, and if they shall decide that it is necessary, then to appraise the damages to be paid as compensation for the taking of each such parcel therefor. The court [commissioners] commissioner shall be sworn faithfully to discharge their duty. The court shall fix the time and place for the first meeting of such court commissioners, and require their attendance; it may also authorize the court commissioners to adjourn their meeting from time to time not later than to a day to be named, and shall fix the time for filing the report of such court commissioners. Id., Chap. IV, Sec. 13. § 4359.

1540. **Meetings, Decision and Appraisals by Court Commissioners.**—The court commissioners shall meet at the time and place ordered by the court. If all do not then appear, a less number may adjourn to a time certain, but no adjournment shall be made to a day later than the time allowed by the court. Such adjournments shall be publicly announced. The court or the clerk thereof may issue writs of subpoena to compel the attendance of witnesses before the court or before the said court commissioners. Either one of such court commissioners may administer oaths to witnesses. The court commissioners, at the time fixed by the court or at the time fixed by adjournment, shall view the premises described in the petition and hear the proofs and allegations of the parties, and render their decision in the premises. They shall report such decision in writing, signed by them or a majority of them, at the time fixed for that purpose. If their decision is that the road is unnecessary or that any part of the land described in the petition is unnecessary to be taken therefor, no further proceedings for the establishment of such road shall be taken for one year thereafter; if the decision is that the proposed road is necessary and that such lands are necessary to be taken therefor, they shall appraise the damages to be paid as compensation to each person interested for each parcel of land. Id., Chap. IV, Sec. 14. § 4360.

1541. **Powers of Court.**—The court may, at the time of the filing of the report or at such other time to which it may adjourn the proceedings,

on cause shown, set aside the report and refer it back to such court commissioners or appoint other commissioners to retry the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. The court may permit the amendment of any petition, affidavit, order, report or proceeding filed or had in the premises in such manner as shall be just and proper; it may fill any vacancy that shall occur among the court commissioners; it may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof; it may adjourn such proceedings or any part thereof from time to time, and may make all such orders in the premises as may be just and proper to further and accomplish the purpose thereof. Id., Chap. IV, Sec. 15. § 4361.

1542. Confirmation of Report; Payment of Damages, Etc.—After the court shall confirm the report of the court commissioners, it shall enter an order authorizing the board of county road commissioners to pay the several sums awarded for damages, and the board shall pay the same accordingly. Such payment shall be made in money to the several persons entitled thereto, and if refused, or if there be no person properly authorized to receive the same, it shall be deposited as directed by the court. Upon filing proof of payment or deposit as ordered, the court shall prepare a certificate under its seal, signed by the judge, reciting briefly the proceedings that have been had, giving the names of the parties interested, describing the lands taken for such road, the award of damages therefor and the payment or deposit of the money, and deliver the same to the board of county road commissioners, and thereupon the title to such land shall be deemed vested in the county to be used for road purposes only. Such certificate shall be recorded in the book of deeds in the office of the register of deeds. Such certificate, certificates or the record thereof or a certified copy of such record, shall be prima facie evidence of the facts recited therein, and of title to such lands in the county and of the right of the board of county road commissioners to construct and maintain a road thereon. The court shall fix the compensation of the court commissioners, not to exceed three dollars per day, and determine the amount of necessary expenses incurred in connection with such proceedings which shall be paid by the board of county road commissioners. Id., Chap. IV, Sec. 16. § 4362.

1543. Joint Construction of County Line Road.—The boards of county road commissioners of adjoining counties may unite in laying out and establishing a county road on or near the line between their counties, and may institute proceedings to acquire the lands for such road, and may thereafter construct and maintain such road at the joint expense of the counties. Id., Chap. IV, Sec. 17. § 4363.

1544. County Roads and State Rewards.—In case state reward is to be applied for, the board of county road commissioners shall file with the state highway commissioner for his approval, a map of the county showing the location of the proposed system of county roads: Provided, however, That this proposed system may be extended if approved by the state highway commissioner. All state rewarded roads composing a part of this system shall be taken over as county roads by the board of county road commissioners, and any road heretofore laid out, or any part thereof, shall become a county road if the board of county road commissioners

shall at any time so determine, and in passing through or on the line between townships and incorporated villages or cities any streets or parts of streets of such village or city may be adopted as a county road, with the consent of the proper authorities of such city or cities, village or villages: Provided, That no street shall be taken over and constituted as a county road which was not a regularly laid out and main traveled road before the incorporation of such village or city: Provided further, That where any street or part of a street is taken over in passing through or on the line between a township and an incorporated village or city, no county road funds shall be expended for the improvement of any such street or part of a street of such village or city to a greater width than sixteen feet, nor with material more expensive than concrete or brick: Provided further, That where any such street shall be taken over as a county road and is improved as such, city and village authorities shall have the right to further improve such road by surfacing the same outside the portion thereof constructed by the county and by the addition of gutters, curbs, sidewalks, and other improvements and to provide for the care and maintenance of such improvements and to levy and collect taxes for the same. The vote of the county road commissioners in respect to such determination shall be taken by yeas and nays, and shall be entered at large on the records of said board of county road commissioners. Notice of such determination shall be forthwith given by the clerk or the highway commissioner of each township and the highway authorities of each city or village in which said road or any part thereof is situated and published in some newspaper printed and circulated in the county, once in each week for three successive weeks. Proof of such service and publication may be made by affidavit by any person knowing the facts, and be filed with the clerk. Such affidavit or the record thereof, or a certified copy of such affidavit or record shall be prima facie evidence of its contents. After service and publication of such notice, the board of county road commissioners shall have sole and exclusive jurisdiction and control of such road so embraced within such determination, and the township or municipality within which the same is situated shall be relieved from all responsibility therefor. Immediately after laying out or taking control of a road said board shall give the same a name by which it shall afterward be known in its proceedings. The board of county road commissioners of any county which has adopted the county road system, is hereby authorized and empowered to, at any time, abandon and discontinue any county road, or any part thereof, by a majority vote. The vote of the county road commissioners in respect to such abandonment and discontinuance shall be taken and entered, and notice thereof be given, in the same manner as required in this section, in cases in which county roads are adopted. After proceedings to discontinue and abandon have been had, the jurisdiction and control of such road shall revert to the township or municipality within which the same is situated which, prior to the time of its adoption as a county road, had jurisdiction and control thereof, and the county shall be relieved from the responsibility therefor. Id., Chap. IV, Sec. 18. § 4364, as Am. by Act 356 of 1917.

1545. Authority of County Road Commissioners as to Roads, Bridges and Culverts.—Said board of county road commissioners shall have

authority to grade, drain, construct, gravel, shale or macadamize any road under its control, or to place thereon any form of improvement which in its judgment may be best, and extend and enlarge such improvements; it shall have authority to construct bridges and culverts on the line of such road, and to repair and maintain the said roads, bridges and culverts; and further that such commissioners shall take over, construct and maintain all bridges upon such highways as may be affected by this act within the county outside the limits of incorporated cities which now have or should have spans greater than thirty feet: Provided, however, That if any controversy arises as to the most suitable length of span for any bridge, either the township or county, or both may appeal to the state highway commissioner, whose decision as to the length of span shall be final and binding. The construction, improvement and maintenance of said roads, bridges and culverts shall be in accordance with plans and specifications furnished by the county highway engineer, who shall have such supervision of construction as will insure that the plans and specifications are strictly followed. The commissioners shall have all the authority in respect to such roads, bridges and culverts which is vested in highway officers in townships, including the right to condemn gravel for road purposes and to petition the county drain commissioner for an outlet drain as provided in section eight, chapter fifteen of this act (Section 1683 of this Guide). Said board of county road commissioners may maintain in its own name an action for any injury to any county road or to any part of the whole width thereof as laid out and established, or to any of the improvements thereon. All moneys recovered in any such action shall be paid to the county treasurer, and be credited to the county road fund. In all cases involving the expenditure of an amount greater than five hundred dollars for the building, rebuilding or repairing of roads or bridges, the board of county road commissioners shall advertise for sealed proposals for such work. When roads of classes "E," "F" or "G" are to be constructed or improved bids shall be advertised for and received on each of said types of construction. The board shall have the right to reject any and all bids, and may do the work by day labor, purchasing the necessary materials and employing the labor therefor: Provided, however, In case the board shall decide to do the work by day labor, the plans and specifications together with all bids received thereon, and the reason, in writing, for not letting the job by contract, shall be filed in the office of the county clerk: Provided further, That if a bridge is to be repaired or built at a cost greater than five hundred dollars, the county road commissioners may apply to the state highway commissioner, who shall assign a competent civil engineer to review and report on plans that may have been prepared by the county highway engineer, or decide as to the merits of the several plans on which tenders may have been received before the contract is let, and pass on the completed structure before the contractor for the same shall be paid. Id., Chap. IV, Sec. 19. § 4365, as Am. by Act 356 of 1917.

Before constructing the highways by day labor, the commissioners must file in the office of county clerk the reasons therefor, and an estimate is required specifying and itemizing the roads and parts of roads on which money is to be expended.—Brandt v. Luce, 177 / 184.

1546. Taxes for County Roads and Expenditure of Funds.—Before the first day of October of each year said board of county road com-

missioners shall cause preliminary surveys, general plans, specifications and estimates of roads, bridges and culverts to be made by the county highway engineer, whose qualifications shall be approved by the state highway commissioner in case it is intended by the commissioners to apply for state reward. Based upon the above estimates, said board of county road commissioners shall determine upon the amount of tax which in its judgment should be raised for such year in said county for the purposes aforesaid, specifying and itemizing the roads and parts of roads upon which such moneys are to be expended, stating the amount asked for each of such roads, and shall cause such determination to be entered upon its records. Such tax shall not exceed five dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation does not exceed ten millions of dollars; such tax shall not exceed four dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than ten million dollars and does not exceed twenty millions of dollars; such tax shall not exceed three dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than twenty million dollars and does not exceed forty millions of dollars; such tax shall not exceed two dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than forty million dollars and does not exceed one hundred million dollars; such tax shall not exceed fifty cents on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than one hundred million dollars. At the annual meeting of the board of supervisors, held in October, the county clerk shall lay such determination before the board of supervisors, and such board of supervisors shall pass upon the said determination, and if a majority of such board of supervisors agree therewith, then such tax shall be apportioned among the several townships and cities of said county according to their equalized valuation. If the determination of the board of county road commissioners shall not meet with the approval of a majority of the board of supervisors, then the said board of supervisors shall proceed to decide upon the amount of tax to be raised for such year in such county for the purposes aforesaid and may allow or reject in whole or in part any or all of the items for the sections of roads thus submitted for its consideration; and it shall not be lawful for such county road commissioners without the consent of such board of supervisors to expend any such moneys upon any other roads than as thus specified. It shall be the duty of the board of supervisors to raise a sufficient tax to keep any county roads or bridges already built in reasonable repair, and in condition reasonably safe and fit for public travel. After the said board of supervisors shall have decided upon the amount of tax to be raised, the said board shall thereupon apportion such tax between the several townships and cities of said county according to their equalized valuation. The supervisors or other assessing officers in such townships and cities shall levy and apportion the taxes so apportioned as provided in this section, to their respective townships and cities respectively, upon which the county taxes are assessed. The taxes so

assessed shall be collected and paid to the county treasurer the same as other county taxes. All the provisions of law relating to the assessment, levy, collection and return of county taxes and the sale of property delinquent therefor, shall apply to taxes to be raised pursuant to this act. The county treasurer shall keep a separate account of the taxes collected and moneys received under this act and shall pay the same out only upon the order of such board of county road commissioners and upon warrants signed by the chairman and countersigned by the clerk of the board. In counties having a county auditor or board of county auditors the warrants shall pass through the hands of such county auditors and be further countersigned by them when payment shall be made thereof by the county treasurer. All moneys raised under the provisions of this act shall be expended by such board of county road commissioners exclusively for the purposes herein mentioned. Id., Chap. IV, Sec. 20. § 4366, as Am. by Act 157 of 1917.

1547. Limit of Indebtedness; Reasonable Repair; Liability.—Said board of county road commissioners shall have no power to contract indebtedness for any amount in excess of the moneys credited to such board and actually in the hands of the county treasurer: Provided, That the board may incur liability to complete roads under construction and upon contracts, after a tax is voted, to an amount not exceeding three-fourths of the said tax. It is hereby made the duty of the counties to keep in reasonable repair, so that they shall be reasonably safe and convenient for public travel, all county roads, bridges and culverts that are within their jurisdiction and under their care and control and which are open to public travel. The provisions of law respecting the liability of townships, cities, villages and corporations for damages for injuries resulting from a failure in the performance of the same duty respecting roads under their control, shall apply to counties adopting such county road system. In actions arising thereunder, service shall be made upon the chairman of the board of supervisors or the county clerk of the county made defendant therein, which shall be named in the process as the "county of....." and any judgment obtained thereon against such county shall be audited and paid as are other claims against such county. Id., Chap. IV, Sec. 21. § 4367.

Authority or duty to keep highways in reasonable repair.—Brandt v. Luce, 177 / 184.

1548. Bonds for County Roads.—Whenever the board of supervisors of the county by a majority vote of all the members elect resolve to contract indebtedness or issue bonds to raise money for the construction and maintenance of county roads, the question shall be submitted to a vote of the electors of the county at a general or a special election called for that purpose. Notice of the submission of such resolution to a vote of the electors and, in case a special election is called, notice of the calling of such special election shall be given in the same manner and for the same length of time as now prescribed by law. If a majority of the electors voting on such resolution shall vote in favor thereof, it shall be deemed to have carried. The manner of stating the question upon the ballots shall be prescribed by the resolution of the board of supervisors. No bond or evidence of indebtedness shall be negotiated at less than par and the accrued interest. All money raised by the board of supervisors for the construction and maintenance of county

roads shall be expended under the direction of the board of county road commissioners. Id., Chap. IV, Sec. 22. § 4368.

1549. All Roads, Except County Roads, Shall be Township Roads.—All established and public roads in townships, except county roads, shall be township roads, and shall be under the care and supervision of the township board and highway commissioner. Id., Chap. IV, Sec. 23. § 4369.

1550. Law Operative Only in Counties Adopting County Road System.—In counties where the county road system is not adopted in manner aforesaid the provisions of this chapter shall not be operative, but in all such counties the acts and provisions of law mentioned and referred to in the last preceding section shall be operative, and shall have the same force and effect as though the provisions of this chapter had not been enacted. Id., Chap. IV, Sec. 24. § 4370.

1551. Accounts of Receipts and Disbursements.—Accurate accounts shall be kept under the direction of the board of all money received and disbursed by it, and a full statement thereof together with a complete statement in detail, of all work done, right of way acquired, and road constructed by said board shall be made to the board of supervisors of the county at its annual meeting each year. The accounts of said board of county road commissioners shall be reported to and audited by the board of supervisors at each meeting thereof or by any committee they may appoint for such purpose: Provided, That in counties having a board of auditors the accounts shall be audited by the board of auditors of that county, but the said board of auditors shall have no jurisdiction over the expenditure of any portion of the county road fund. Id., Chap IV, Sec. 25. § 4371.

1552. County Road System Not to Prohibit State Reward Roads.—The adoption of the county road system in any county shall not prohibit any organized township from building state reward roads with moneys raised by tax or by bonding, and in townships where money has been raised by bonding to build state reward roads, the township clerk shall certify to the board of supervisors at the annual meeting thereof the amount of such bonds remaining unpaid, and the county road tax paid by such township shall be returned to the township each year to be applied in payment of such bonds until they are fully paid: Provided, however, That no township shall be entitled to the return of its county road tax until it shall have paid as much money in county road taxes as may have been expended on county roads within said township by the county road commissioners. Id., Chap. IV, Sec. 26. § 4372.

It is within the power of the legislature to provide by statute that, in consideration of previous expenditures by a township for state reward roads and county road taxes paid out of proportion to benefits, the township should have, under certain contingencies, through a process of rebate, relief in part from the burden of such taxation for a time thereafter.—Clearwater Twp. v. Kalkaska Supervisors, 187 / 518.

1553. When Township Decides to Build State Reward Road.—In case any organized township shall decide to build a mile or more of state reward road as provided in the preceding section, the township board of such township shall file a written notice with the board of county road commissioners through the county clerk, on or before the first day of May in the year in which such road is to be built, stating that it is the intention of such township to build a certain piece or pieces of road, which shall be

fully described in such notice, and thereupon the board of county road commissioners shall furnish an engineer or surveyor who shall establish a grade for such road or roads, and shall set grade stakes on each side of the road, not more than one hundred feet apart, to which the grade shall conform. Should a road which the township has decided to improve be a portion of one that the county road board is improving or proposes and intends to improve, then such township shall build such piece of road of such material and of such width as will conform to the proposed plans of such county road board for such road. Id., Chap. IV, Sec. 27. § 4373.

1554. Rescinding Vote by Which County Road System Was Adopted.—The board of supervisors of any county which has adopted or may hereafter adopt the county road system, may, upon petition of ten freeholders residing in each of the several townships, incorporated villages and cities in the county, submit the question of rescinding the vote by which it was adopted, and the resolution to submit, and all proceedings subsequent thereto, shall, as nearly as may be, follow the forms and manner of proceedings provided for voting on the question of adopting the county road system. Id., Chap. IV, Sec. 28. § 4374.

1555. Effect of Rescinding Vote.—When any county shall rescind the vote by which it has adopted the county road system, this act shall cease to be operative except for the purpose of completing work under contract at the time of such rescission. The funds then remaining in the county treasury or thereafter paid therein to the credit of the county road tax shall be placed in the general fund of said county. When any county shall have adopted the county road system and such adoption shall have been declared null and void by any court of competent jurisdiction, all moneys remaining in the county road fund, or thereafter placed therein, shall, upon resolution of the board of supervisors, be placed in and become a part of the general fund of such county. All county roads shall revert to the townships, and all highways and bridges shall hereafter be laid out, built and maintained in all respects as though such county had never adopted the county road system. Id., Chap. IV, Sec. 29. § 4375.

1556. Provisions Relative to Marquette County.—None of the provisions of this chapter relative to the election and term of office of county road commissioners shall apply to the county of Marquette, or to any other county in which special provision therefor, has been or may hereafter be made by the legislature. In said county of Marquette the board of supervisors shall appoint a board of county road commissioners who shall possess all the powers and duties of county road commissioners under this act. Such board of county road commissioners in said county shall consist of three members, one of whom shall hold his office for the term of one year, one for the term of two years and one for the term of three years from and after the first day of May, nineteen hundred five, and annually thereafter. Prior to the first day of May of each year, the board of supervisors shall appoint one commissioner for the term of three years to succeed the commissioner whose term of office shall soonest expire. Such commissioners shall hold their offices until their successors are appointed and qualified. Whenever any vacancy shall occur in the office of county road commissioner in said county the board of supervisors may appoint some qualified person to fill such vacancy for the

unexpired term of such office. The board of supervisors may diminish the number of county road commissioners in such county as hereinbefore in this act provided. Id., Chap. IV, Sec. 30. § 4376.

1557. Townships Operating Under Township Road System.—Any township which may have adopted the township road plan provided for in sections twenty-six and twenty-seven of act number two hundred thirty of the public acts of eighteen hundred ninety-five, as originally set forth, and which has raised money and built roads in good faith, shall continue under such plan until by a majority vote of the electors of such township voting thereon, the township shall abolish such system; and while under such system they shall not, without their consent, be liable to any tax for a county road system: Provided, That the county in which such township or townships are situated shall have adopted the county road system previous to nineteen hundred thirteen. No township in the State not now in operation under this township system shall adopt it. Any township which may have adopted said township road plan as aforesaid and which shall desire to discontinue and abandon the same may do so in the following manner: Upon presentation to the township board of a petition, signed by not less than twenty-five residents and taxpayers of said township, requesting the discontinuance of such plan, it shall be the duty of said board to submit the question of the discontinuance of the township road plan to the determination of the electors of the township at the next ensuing April or November election, or at a special election called for that purpose. The form of ballot shall be prescribed by the township board and the votes upon said question shall be cast, counted, canvassed and returned in the same manner as is now provided by law for casting, counting, canvassing and returning votes cast at elections for county officers. If the proposition of discontinuing the township road plan shall be decided in the affirmative, it shall be the duty of the board of county canvassers to immediately certify such fact to the clerk of the county, who shall present such certificate to the board of supervisors at its next ensuing meeting; thereupon said board of supervisors shall by resolution declare that the township road plan in said township has been duly and formally abandoned and that henceforth said township shall be deemed subject in all respects to the provisions of this chapter. Immediately upon the adoption of the resolution aforesaid, the township so rescinding the township road plan shall be subject in all respects to the county road system and to the rights, privileges, duties and obligations thereby imposed: Provided further, That any county adopting the provisions of this chapter to which money is apportioned and paid under the provisions of act three hundred two of the public acts, nineteen hundred fifteen, shall be deemed liable to any township in said county operating under the provisions of the township road plan as aforesaid for such amount as will represent the proportionate share of said township of the money thus apportioned and paid. It shall be the duty of the board of supervisors to declare by appropriate resolution such proportionate amount which shall be based upon the ratio that the valuation of the property in said township as last equalized bears to the said valuation of the entire county. Upon the adoption of said resolution, it shall be the duty of the county treasurer to pay over to the treasurer of the township to be used for highway purposes, pursuant to the general laws of the State, such amount as the

township may be entitled to received. Id., Chap. IV, Sec. 31. § 4377, as Am. by Act 271 of 1917.

Sections 26 and 27 of Act 230 of 1895, above referred to, are § § 4287 and 4288, C. L. of 1897. See also Act 69 of 1905, under which townships might, to 1909, adopt a township system of roads.

A township cannot claim that an act of the legislature, exempting such townships from taxation for county road systems as shall establish a township road system, constitutes a contract, the obligations of which a subsequent legislature cannot impair by repealing the act, as the municipality is but a government agency.—Supervisors v. Hubinger, 137 / 72.

CHAPTER VI.

STATE REWARD FOR ROADS.

1558. State Highway Department.—There is hereby created and established a state highway department, which shall be charged with the giving of instruction in the art of building, improving and repairing public wagon roads and bridges, collecting reports from township and county highway commissioners, overseers of highways and superintendents and commissioners of streets in villages and cities, and with the distribution of any state reward for improving the public wagon roads, that this legislature or any future session may provide for, or any funds that may be given to the State for such purposes by the United States government. Act 283 of 1909, Chap. V, Sec. 1. § 4378.

1559. Commissioner Shall Receive Copy of Report of State Highway Commissioner.—The state highway commissioner is required to make a biennial report to the governor and to have a sufficient number of such reports printed to provide every township highway commissioner with a copy. See Id., Chap. V, Sec. 2. § 4379, as Am. by Act 177 of 1917.

1560. Road Institutes.—The highway commissioners of the several townships in each and every county in the State, and the county highway commissioners in counties working under the county road law, shall if deemed advisable by the state highway commissioner, meet annually in a road institute, at such time and place as the state highway commissioner may designate, there to consider such matters as he may present to their attention, and to discuss such matters of road improvement as may be of special interest to such township and county highway commissioners, and every township highway commissioner may collect from his township the same per diem as in actual road work, and his actual expenses in attending such institute shall, if reasonable, be allowed by the township board and shall be paid by said township. Id., Chap. V, Sec. 3. § 4380.

1561. Commissioners and Overseers to Report to State Commissioner.—At the request of the state highway commissioner, every road district overseer of highways, every township overseer of highways, every township highway commissioner, every county highway commissioner, and every village or city superintendent or commissioner of streets, shall make a sworn report to the state highway commissioner, on or before March first each year, answering such questions as the state highway commissioner shall deem proper to ask and they able to answer, giving him such information as he may require and their ability permit, appertaining to roads, bridges, streets, method of construction, materials, machinery and costs, upon blanks which he may furnish and send out. Id., Chap. V, Sec. 4. § 4381.

1562. Penalty for Refusal or Neglect to Make Report.—Any road district overseer of highways, or township overseer of highways, or township highway commissioner, or county highway commissioner, or village or city superintendent or commissioner of streets, who shall refuse or neglect to make such report at time stated or within thirty days thereafter, when requested to by the state highway commissioner, or who shall, in whole or in part, refuse or neglect to make such report at time stated or within thirty days thereafter, or who shall make a report which shall be in whole or in part false, shall be guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, be fined in any sum of not less than ten dollars and costs, and not exceeding one hundred dollars and costs, or be confined in jail not less than ten days, nor more than thirty days, for each and every offense, at the discretion of the court. Violations of the provisions of this act may be prosecuted in the name of the people of the State of Michigan, and it shall be the duty of the prosecuting attorney of each county to prosecute for any violation of the provisions contained in sections four and five of this chapter. Id., Chap. V, Sec. 5. § 4382.

1563. State Commissioner to Give Information to Local Officials.—It shall be the duty of the state highway commissioner to furnish outline plans and specifications for the improvement of public wagon roads, and, when requested to, and where proposed improvements are of sufficient importance to warrant, he shall go or send some one, to give expert advice of how to best build or improve public roads or bridges. He shall also gather all the information possible about all kinds of road building material in the State, its relative value, cost, and also cost of transportation to other places in the State, and to give this information upon request to any road or street official in the State free of charge to them. Id., Chap. V, Sec. 6. § 4383.

1564. Definition of Terms.—The terms "roads" or "public roads" or "public wagon roads" in this act shall, at all times, be construed to mean the leading public wagon roads outside of incorporated villages and cities: Provided, That in passing through or upon the boundary line of such incorporated villages or cities, roads which were legally laid out and established as township roads before the incorporation of such villages or cities shall be considered public wagon roads within the meaning of this act. Id., Chap. V, Sec. 7. § 4384, as Am. by Act 46 of 1917.

1565. Township Road Maps.—The state highway commissioner shall keep a complete record of the doings of the state highway department, which record shall be the property of the State, and shall as soon as possible make a map of every township in the State showing the roads and the conditions of the roads, together with marks indicating where road building material can be found, and what kind and what quality. Id., Chap. V, Sec. 8. § 4385.

1566. Application for State Reward Road.—Whenever any township board, good roads district or county road commissioners shall make application for State reward on a road under their jurisdiction, certifying that they have made arrangements to improve the same under the provisions of section ten, chapter five of this act, and to maintain the same under sections twelve and sixteen, chapter five of this act, and shall file plans and profile of the road to be improved made out by a competent

engineer, and shall make application for general plans and specifications, it shall be the duty of the state highway commissioner, in case the location of such road meets with his approval, to enter such application in the order in which it is received and to furnish the general plans and specifications asked for. When such road has been completed and inspected by the state highway commissioner, or some one acting under authority of the commissioner and is found to be up to the required standard, he shall, providing there are funds in the state treasury for the paying of this reward, verify the same to the auditor general of the State, who shall draw a warrant upon the state treasurer, payable to the proper authorities in such township, good roads district or county, for the amount of the reward due them according to the class and width of road built. And providing there are no funds in the state treasury for the paying of such reward when such road is completed and accepted, as soon as sufficient moneys shall become available, the state highway commissioner shall verify the same to the auditor general, who shall draw his warrant as above set forth, providing that the road shall have been kept in as good condition as when approved by the commissioner until the payment of the reward thereon. Id., Chap. V, Sec. 9. § 4386, as Am. by Act 356 of 1917.

1567. Roads Entitled to $250 per Mile.—The following classes and widths of roads, when built, shall merit the reward attached to each description:

(a) Every mile of well graded road on which the steepest incline shall not exceed six per centum, except where found impracticable and a steeper grade is recommended after examination by the state highway commissioner, and the width of which shall not be less than twenty feet between and exclusive of side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide, made of a mixture of sand and clay or other material according to specifications furnished by the state highway commissioner, shall merit, if approved by the state highway commissioner, a reward from the State of two hundred fifty dollars and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra twenty-five dollars per mile for each additional foot in width of metaled surface in excess of nine feet up to and including sixteen feet. Id., Chap. V, Sec. 10, Subd. (a). § 4387, as Am. by Act 356 of 1917.

1568. Roads Entitled to $500 per Mile.—(b) Every mile of well graded road on which the steepest incline shall not exceed six per centum, except where found impracticable and a steeper grade is recommended after examination by the state highway commissioner, and the width of which shall not be less than twenty feet between side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide and which shall consist of not less than eight inches of compacted gravel, or not less than twelve inches of compacted burnt shale, which must be applied in not less than two layers, each layer to be rolled separately: Provided, That both shoulders and metaled track shall be properly crowned so as to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the state of five hundred dollars and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra fifty dollars per

mile for each additional foot in width of metaled surface in excess of nine feet up to and including sixteen feet. Id., Chap. V, Sec. 10, Subd. (b), § 4387, as Am. by Act 356 of 1917.

1569. **Gravel Roads Entitled to $750 per Mile.**—(c) Every mile of well graded road on which the steepest incline shall not exceed six per centum, except where found impracticable and a steeper grade is recommended after examination by the state highway commissioner, and the width of which shall not be less than twenty feet between side ditches and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide, made in two courses, the bottom course to be crushed stone, slag or other material, if approved by the state highway commissioner, and shall not be less than four inches thick after thorough rolling, and a top course consisting of a layer of gravel or blast furnace slag which shall not be less than three inches thick after being thoroughly rolled: Provided, That both shoulders and metaled track shall be properly crowned so as to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of seven hundred fifty dollars, and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra seventy-five dollars per mile for each additional foot in width of metaled surface in excess of nine feet up to and including sixteen feet. Id., Chap. V, Sec. 10, Subd. (b). § 4387, as Am. by Act 356 of 1917.

1570. **Crushed Stone Roads Entitled to $750 per Mile.**—(d) Every mile of well graded road on which the steepest incline shall not exceed six per centum, except where found impracticable and a steeper grade is recommended after examination by the state highway commissioner, and the width of which shall be not less than twenty feet between side ditches, and which shall be properly drained and have a wagon way or travel track not less than nine feet wide made in two courses, the bottom course to be of gravel, slag or other materials, if approved by the state highway commissioner, and be not less than four inches thick after thorough rolling, and a top course consisting of a layer of crushed stone which shall be not less than three inches thick after being thoroughly rolled and properly bonded: Provided, That both shoulders and metaled track shall be properly crowned to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of seven hundred fifty dollars, and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra seventy-five dollars per mile for each additional foot in width of metaled surface in excess of nine feet up to and including sixteen feet. Id., Chap. V, Sec. 10, Subd. (d). § 4287, as Am. by Act 356 of 1917.

1571. **Macadam Roads Entitled to $1,000 per Mile.**—(e) Every mile of well graded road on which the steepest incline shall not exceed six per centum, except where found impracticable and a steeper grade is recommended after examination by the state highway commissioner, and the width of which shall not be less than twenty feet between side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide of well compacted macadam not less than six inches thick laid in two courses of crushed stone: Provided, That the bottom course may be of blast furnace slag each to be properly bonded, with stone screenings, asphalt, bitumen, or other cement approved by the state highway commissioner, and thoroughly

rolled: Provided, however, That both shoulders and metaled track shall be properly crowned so as to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of one thousand dollars, and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra one hundred dollars per mile for each additional foot in width of macadamized surface in excess of nine feet up to and including eighteen feet: Provided further, That bituminous macadam roads of class "E" built by the penetration method under specifications prepared by the state highway commissioner shall be entitled to fifty per cent added reward. Id., Chap. V, Sec. 10, Subd. (e). § 4287, as Am. by Act 356 of 1917.

1572. Concrete Roads Entitled to $2,000 per Mile.—(f) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall be not less than twenty-four feet between side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide and which shall consist of properly laid bituminous concrete or cement-concrete, or such combination of these materials as may be specified, not less than six inches in depth or bituminous concrete of not less than three inches compacted depth laid on a macadam base of not less than five inches compacted depth, in accordance with specifications approved by the state highway commissioner: Provided, That the cement shall be required to meet the standard tests then in force of the American Society of Civil Engineers, and that the other ingredients, the manner of laying and the kind of inspection employed shall be made to comply with specifications made by, or approved by the state highway commissioner, shall merit, if approved by the state highway commissioner, a reward from the State of two thousand dollars per mile and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra two hundred dollars per mile for each additional foot in width of concrete surface up to and including twenty feet. Id., Chap. V, Sec. 10, Subd. (f). § 4287, as Am. by Act 356 of 1917.

1573. Paving Brick Roads Entitled to $2,000 per Mile.—(g) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall be not less than twenty-four feet between side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide in the clear between curbs and which shall consist of a paving brick surface laid on sand, gravel, broken stone, slag or concrete: Provided, however, That the quality of brick, manner of laying and the kind of inspection employed shall be made to comply with the specifications made by, or approved by the state highway commissioner, shall merit, if approved by the state highway commissioner, a reward from the State of two thousand dollars per mile and pro rata for extra miles and fractions thereof in excess of the first mile, with an extra two hundred dollars per mile for each additional foot in width of brick roadway up to and including twenty feet. Id., Chap. V, Sec. 10, Subd. (g). § 4287, as Am. by Act 356 of 1917.

1574. Additional Reward for Width of Track.—Any road may be built with a central track of one class as above specified, and shoulders of a different class, and when so built, if approved by the state highway

commissioner, shall merit a reward from the State for the central track as above specified, plus a reward for each extra foot in width for the shoulders according to the class built: Provided, That plans for the same are approved by the state highway commissioner before construction begins: Provided further, That the total width rewarded shall not exceed twenty feet. Id., Chap. V, Sec. 10. § 4287, as Am. by Act 356 of 1917.

1575. Additional Reward for Gravel on Class B and C Roads.—Any class B road shall be entitled to fifteen per cent reward added to the above specified reward for each five per cent increase in percentage of gravel over sixty per cent up to and including eighty-five per cent retained on a one-eighth inch square mesh screen. Any gravel surfaced class C road shall be entitled to five per cent reward added to the above specified reward for each five per cent increase in the percentage of gravel surface over sixty per cent up to and including eighty-five per cent retained on a one-eighth inch mesh screen: Provided, That these increases do not apply to double reward roads. Id., Chap. V, Sec. 10a, added by Act. 85 of 1917.

1576. Yearly Limit of State Reward.—No claim for State reward for improved roads of over four miles in any one surveyed township in any one fiscal year shall be allowed by the state highway commissioner: Provided, however, That if any township or county shall have raised money by tax or sale of bonds to build a mile or more of road such as merit State reward and the road shall be built and approved by the state highway commissioner, and this road is kept in as good condition as when approved by the state highway commissioner, such township or county shall have its application number remain upon the books of the state highway department, and draw from the state reward fund each year until such time as the township or county has received the amount due for the class and the amount of road built. The money paid as state reward shall be credited to the road funds of the township, county or good roads district as the case may be. Id., Chap. V, Sec. 11. § 4388.

1577. Town Road Officials Shall Organize System of Maintenance.—It shall be the duty of the road officials of every county, good roads district, or township in which state rewarded roads have been built, to organize an adequate, efficient and continuous system of maintenance for all such roads, which system must be approved by the state highway commissioner, in order to make such county, good roads district or township eligible to any further state reward; and counties, good roads districts, or townships which have not heretofore, but may hereafter build state rewarded roads, shall organize such system of maintenance before any state reward is paid to such county, good roads district or township. Id., Chap. V, Sec. 12. § 4389, as Am. by Act 356 of 1917.

1578. Further Reward May be Refused to Township.—The state highway commissioner is hereby given authority to refuse to grant any further road reward to any township, good roads district or county that has been rewarded by the State which does not keep its state reward roads in proper repair; but upon his refusal to any township, good roads district or county for an allotment of state reward, it shall be the commissioner's duty to inform the proper officials of the repairs necessary to place it in a position to again be eligible to receive state reward, and if these repairs

are made satisfactorily to the commissioner, he shall reinstate it to the eligible reward list. Id., Chap. V, Sec. 12. § 4389, as Am. by Act 356 of 1917.

1579. State Commissioner May Make Repairs if Township Neglects.—Should the township, good roads district or county fail to make the repairs ordered by the state highway commissioner within a reasonable time after being so ordered, then the state highway commissioner shall cause such repairs to be made and pay for them out of the reward money earned by such township, good roads district or county, and it shall then become eligible to receive further state reward. Any balance remaining due to such township, good roads district or county after payment for such repairs shall be paid to such township, good roads district or county. If no reward is due said county, good roads district or township, then the state highway commissioner shall have authority to make the necessary repairs and pay for same out of the highway fund and render a bill for same to the proper officers of such county, good roads district or township, which bill shall be paid upon the warrant of such officers, and the amount thereof returned to the state treasury to be credited to the highway fund and the supervisors shall include the amount in the next regular tax roll. Id., Chap. V, Sec. 12. § 4289, as Am. by Act 356 of 1917.

1580. State Commissioner's Decision Final.—The decision of the state highway commissioner shall be final, relative to whether the road is built well enough or not to merit state reward, and shall have the right to retain any amount of the reward he deems advisable until the road has been thoroughly tested. Id., Chap. V, Sec. 13. § 4390, as Am. by Act 356 of 1917.

1581. Additional Reward on Raise of Standard.—Whenever any township or county shall rebuild or widen the metaled surface of any road on which state reward has heretofore been paid, and thereby raise the standard from a lower class to a higher one, or from a narrow metaled track to a wider one, then shall such township or county be entitled to receive the difference between the reward already paid and the reward it would now be entitled to receive on account of such road, and had no former reward been paid: Provided, That application for increased reward shall have been made to the state highway commissioner before beginning the work of rebuilding or widening, and further, that such road shall have been rebuilt or widened in accordance with specifications furnished by, or approved by the state highway commissioner and accepted by him when completed. Id., Chap. V, Sec. 15. § 4392.

1582. Township Entitled to Annual Repair Reward.—Any county, good roads district or township that shall maintain its roads in accordance with specifications prepared by or approved by the state highway commissioner, shall be entitled to an annual repair reward equal to four per centum of the total state reward previously paid to such county, good roads district or township not counting any roads that may have been accepted for state reward during the current fiscal year: Provided, That no mile of road shall be entitled to more than seventy-five dollars repair reward in any one year. Id., Chap. V, Sec. 16. § 4393, as Am. by Act 356 of 1917.

1583. Bridges on State Reward Roads.—The state highway department shall design, construct and maintain all bridges greater than thirty

foot clear span on state reward roads: Provided, That no bridge shall be constructed or repaired by the state highway department until the township, county or good roads district shall have expended in building the road or roads including the bridge site, an amount, not including state reward, equal to the estimated cost of the bridge plus the state reward merited on the road or roads built. Id., Chap. V, Sec. 17. § 4394.

1584. State Reward Trunk Line Highways.—In Act 334 of 1913 (§ § 4851-4856) as amended by Act 183 and Act 240 of 1917, provision is made for the establishment of state reward trunk line highways which shall be composed of the highways and bridges constituting the routes indicated by section 2 of said act and it is provided that such designated trunk line highways not heretofore established or as such trunk lines are changed by the provisions of this act, and such additional trunk line highways as may be necessary to give each county its full quota of trunk line mileage, either as main lines or branches from the main lines, may be laid out as follows, to-wit: Upon petition of any county through its board of county road commissioners in counties under the county road system, or through its board of supervisors in other counties, or upon his own action, the state highway commissioner shall make preliminary surveys and such other investigations as he shall deem necessary of one or more routes for state reward trunk line highways, through such county. After an investigation, (and within a reasonable time), the state highway commissioner shall submit to the county road commissioners, boards of supervisors, good roads district commissioners or township boards, as the case may be, maps showing feasible routes and approximate estimates of cost of building over each of said routes, and thereupon the said board shall decide upon one of the said routes which shall then be known as a part of the state reward trunk line highway system. Should said board fail to decide upon a route within a reasonable time, the state highway commissioner shall then designate the route and such route so designated shall then be known as and become a part of the state reward trunk line highway system. The trunk line highway routes within said county shall be such as shall afford a junction with that part of the state reward trunk line highway system established, projected, or capable of projection in an adjoining county. The maximum number of miles of trunk line highways which may receive double reward in any county shall be computed by multiplying the number of surveyed townships by three, fractional townships to be computed pro rata. Act 334 of 1913, Secs. 1 and 2. § § 4851-52, as Am. by Act 240 of 1917.

The office of a proviso is to limit, modify, or explain the main part of the section to which it is attached, rather than to enlarge its provisions, unless it is clearly apparent that the legislature intended a more comprehensive meaning.—Luce v. State High. Com'r, 181 / 599.

1585. Double State Reward on Trunk Line Highways.—Whenever any county, good roads district or township shall file notice with the state highway department through its proper officers that arrangements have been made or sufficient funds raised to improve three miles or more of road which is a part of the state reward trunk line highway system previously established according to the provisions of this act, and shall ask for survey, plans and specifications, and shall make application for state reward under provisions of this act, it shall be the duty of the state highway commissioner to enter such application and cause the road to be surveyed and have plans and specifications prepared. When

any county under the county road system, or good roads district or township shall build two miles or more of such road, the same shall be inspected by an engineer under the directions of the state highway commissioner, and if found to be up to the required standard, shall be entitled to and paid double the legal state reward as provided and specified in Chap. 5, Act 283 of 1909, (sections 1603-26 of this Guide), as amended or as may hereafter be amended. Id., Sec. 3. § 4853.

1586. Bridges and Culverts on Trunk Line Highways.—The state highway department shall design all bridges and culverts and construct, repair and maintain all bridges greater than thirty foot clear span on state trunk line highways: Provided, That no bridges shall be constructed until the county, good roads district or township has funds available for, and agrees to construct at least three miles of road including the bridge site: Provided further, That no bridge shall be constructed hereunder by the State within the corporate limits of any city or village having a population in excess of six thousand according to the last official federal census: Provided further, That the state highway commissioner is authorized to enter into such arrangements as may be just and equitable whereby the State shall be obligated to pay not more than one-half of the cost of construction of a bridge situated on the boundary of such municipality or on the boundary line between this state and another state of the Union, and may make such agreements and contracts with the proper officials of such municipality or the officials of such other state or of any county thereof, as may be necessary and expedient for the purposes hereof. Id., Sec. 4. § 4854, as Am. by Act 183 of 1917.

1587. Added Reward if State Reward Road Becomes Part of Trunk Line.—Old state reward roads, which are or become a part of the state reward trunk line highway system, shall be, if in perfect repair, entitled to one-half additional state reward, or if such old rewarded roads be widened or resurfaced, or both, then shall the county, good roads district or township be entitled to an added reward equal to the difference between the reward paid and the legal reward under this act. Id., Sec. 5. § 4355.

1588. When State Commissioner May Refuse Trunk Line Reward to Township.—The state highway commissioner is hereby given authority to refuse to grant any further trunk line road reward to any township, good roads district or county that has been rewarded by the State, which does not keep its trunk line rewarded roads in repair; and upon his refusal of an allotment of trunk line reward to any township, good roads district or county, it shall be the commissioner's duty to inform the proper officials of the repairs necessary to place it in a position to again be eligible to receive trunk line reward, and if these repairs are made satisfactorily to the commissioner, he shall reinstate it to the eligible trunk line reward list. Id., Sec. 6. § 4856.

1589. State Commissioner to Make Repairs if Township Fails to Do So.—Should the township, good roads district or county fail to make the repairs ordered by the state highway commissioner within a reasonable time after being so ordered, then the state highway commissioner shall cause such repairs to be made and pay for them out of the reward money earned by and due to such township, good roads district or county, and it shall then become eligible to receive further state reward. Any balance

remaining due to such township, good roads district or county after payment for such repairs shall be paid to such township, good roads district or county. If no reward is due said county, good roads district or township, then the state highway commissioner shall have authority to make the necessary repairs and pay for same out of the trunk line highway fund and render a bill for same to the proper officers of such county, good roads district or township, which bill shall be paid upon the warrant of such officers, and the amount thereof returned to the state treasury to be credited to the trunk line highway fund and the supervisors shall include the amount in the next regular tax roll. Id., Sec. 6. § 4856.

1590. Naming of State Reward Roads.—All state reward roads in this State not designated and named at the time this act shall take effect shall be designated by appropriate names in their entirety by the state highway commissioner, and the county roads board, respectively, or boards of supervisors in counties not operating under county road system.

The county road commissioners or the boards of supervisors in counties not operating under the county roads system shall cause to be placed suitable sign boards at every branch of every state reward road or cross road. It is made a misdemeanor to deface, injure, destroy or place any advertisement, legal or otherwise, on such sign board and it is the duty of every supervisor, county road commissioner and township highway commissioner who has knowledge that any injury has been done to any such sign board, to make a diligent effort to ascertain the name of the person who defaced, injured, destroyed or placed any advertisement, legal or otherwise, on said sign board and to make a complaint to the prosecuting attorney of his county. See Act 282 of 1915. § § 4866 to 4869, inclusive.

CHAPTER VII.

SECURITY OF PERSONS AND PROPERTY ON HIGHWAYS.

1591. Commissioner's Duty When Width of Road is Reduced by Washing.—When any public highway which passes along the bank of any lake, river, or other water course, and which is not included in the limits of a city, or of a platted village, whether incorporated or unincorporated, shall, by the falling or washing away of the bank, or from any other cause become reduced to a width of less than fifty feet, it shall be the duty of the commissioner, acting upon his own knowledge, or on being notified thereof in writing, by any person of adult age, such notice stating the place or places where such defect exists, to proceed within ten days, and examine the same, and if he finds it to be less than fifty feet wide, he shall forthwith lay out, open and work such highway in and upon the adjacent land to the width of fifty feet; and if such land be inclosed, he shall, within ten days, give notice in writing to the owner or occupant of such land, requiring such owner or occupant within thirty days to remove the fence, hedge, or other structure forming the inclosure, back from the bank far enough to admit of such opening and working, and if such owner or occupant shall neglect to remove the same, as required by such notice, it shall be the duty of the commissioner forthwith to remove such fence or other structure, doing the owner or occupant no unnecessary damage in making such removal. Act 283 of 1909, Chap. VI, Sec. 1. § 4395. [See Form No. 110.]

The highway defined in this chapter is one passing along a natural body of water and not one

in which a ditch or other artificial watercourse may be laid.—DeLapp v. Beckwith, 114 / 394. Application to toll roads.—Carver v. Plank Road Co., 61 / 585.

1592. Railing.—When any such highway is less than fifty feet wide, and more than thirty-five feet wide, the commissioner may, in his discretion, instead of widening the same, erect near the edge of the bank, and thereafter maintain in good order a substantial railing or fence, which shall be at least three feet high and sufficiently strong to prevent persons, carriages and animals from falling over such bank. Id., Chap. VI, Sec. 2. § 4396. See also section 36 of this Guide.

The legislature intended by this section, to characterize as unsafe for travel, public high ways along the banks of lakes, rivers and other watercourses in which the worked part was less than 35 feet in width, and it is proper to consider this section in connection with the law providing for the collection of damages sustained by reason of defective public highways.—Carver v. Plank Road Co., 61 / 585. See Section 304.

1593. Proceedings When Building Prevents Widening of Road.—When any dwelling house or other building shall stand so near any lake, river, or other water course, where a highway, which is not included in the limits of a city, or of a platted village, whether incorporated or unincorporated, intervenes, that there shall not be room for a road at least thirty-five feet wide, then the commissioner shall, within ten days after having knowledge of the fact, give thirty days' notice in writing to the owner or occupant of the land to be taken, and to the owner or occupant of such house or other building, of his intention to open a highway in the rear of such house or other building, and if such house or other building shall, within the said thirty days, be moved back far enough to admit of a road being opened and worked at least thirty-five feet wide in front thereof, then the commissioner shall widen such highway in front of such house or other building; but if such house or other building shall not be so removed, he shall then proceed without further delay to lay out a highway in the rear of such house or other building, not less than fifty feet wide. Id., Chap. VI, Sec. 3. § 4397. [See Form No. 111.]

1594. Damages to Owner of Property.—Whenever any commissioner acting under the provisions of this chapter, shall remove or cause to be removed, any fence, hedge, or other structure forming the enclosure, and shall take any land to widen a highway, or shall lay out a highway in the rear of any house or other building, he shall award such damages to the owner of the property taken, and for removing such fence, hedge or other structure forming the enclosure when done by the owner, as to him shall seem just and reasonable, and shall tender to the person entitled thereto an order on the treasurer of his township for the amount of any damages awarded to such person; but when no owner, occupant or agent of the property taken resides or can be found in his township, then the commissioner shall deposit such order with the clerk of his township, who shall deliver the same to the person entitled thereto when applied for: Provided, That any person dissatisfied with the amount of damages awarded by any commissioner in any action had under this chapter, may appeal from such award in the same manner that the action of a commissioner in laying out, altering, or discontinuing a highway, may be appealed from, and subject to the same conditions and liabilities as in such cases provided, but no such appeal shall have the effect to delay any proceeding hereinbefore by this chapter authorized to be had. Id., Chap. VI, Sec. 4. § 4398.

1595. Toll Road to be Maintained in Safe Condition.—It shall be the duty of the commissioner of highways of each township to see that all plank or gravel road companies, or companies owning or controlling any kind of toll road, maintain their roads in a good and safe condition at all times. When any such plank, gravel or toll road shall become defective, he shall serve a written notice upon any officer or agent of the company owning or controlling the same, describing the locality where such defect exists, and requiring such company to repair such defect within five days from the receipt of such notice; and every such company failing to comply with the requirements of such notice shall for every such offense be subject to a penalty of fifty dollars. Id., Chap. VI, Sec. 5. § 4399.

Construction of road bed, see Plank Road Co. v. Judge, 109 / 371; Erin Twp. v. Plank Road Co., 115 / 465. Abandonment of road.—Gravel Road Co. v. Hogadone, 150 / 638.

1596. Expenses to be Paid Out of Highway Fund.—All proper expenses incurred by any commissioner in complying with the requirements of this chapter shall be paid out of the highway fund of the township. Id., Chap. VI, Sec. 6. § 4400.

CHAPTER VIII.

OBSTRUCTION OF HIGHWAYS AND ENCROACHMENTS THEREON.

1597. Commissioner to Order Removal of Encroachments.—In every case where a public highway has been or shall be encroached upon by any fence, building, or other encroachment, the commissioner may make an order under his hand requiring the occupant of the land through or by which such highway runs, and of which such fence, building, or other encroachment forms a part of the enclosure, to remove such encroachment from such highway within thirty days; and he shall cause a copy of such order to be served upon such occupant, and every such order shall specify the width of the road, the greatest extent of the encroachment, and of what it consists, and the place or places in which the same may be, with reasonable certainty; but fences erected for the protection of hedges, or temporary fences for the protection of other improvements, shall not be deemed encroachments, so long as they may be necessary for such protection, unless the road be so fenced up as to make the traveled portion less than eighteen feet wide, provided that such hedges or other improvements be not themselves encroachments.—Act 283 of 1909, Chap. VII, Sec. 1. § 4401. [See Form No. 112.]

CIRCUIT COURTS IN CHANCERY: Have jurisdiction and authority to hear and determine all cases of encroachments upon the public highways, etc. See Sec. 12302n, C. L. 1915.

JUSTICES OF THE PEACE: "May have jurisdiction in action for damages, resulting from obstructions to highways," subject to certain restrictions. See Section 14169n, C. L. 1915.

ENCROACHMENTS: The earlier law (Act 115 of 1861, as amended by Act 64 of 1875) allows an action for encroachments to only such highways as are "laid out and opened." This was held not to extend to highways by user.—See Parker v. People, 22 / 93; Roberts v. Cottrellville, 25 / 23; Campau v. Button, 33 / 525; Gregory v. Stanton, 40 / 271; People v. Smith, 42 / 138; Wilson v. Gifford, 42 / 454. But the provisions of the present law extend to all public highways, whether actually laid out or such from user.—Krueger v. LeBlanc, 62 / 79. Highways whether by land or water must be used with due regard to their lawful and proper use by others.—People's Ice Co. v. Steamer Excelsior, 44 / 229. Our laws recognize a difference between encumbrances, which cumber a way and make it more difficult and dangerous to travel, and those which appropriate the way or a portion thereof by fences, walls or buildings; and different proceedings and penalties are provided therefor. Powers given to a municipal corporation to impose penalties for cumbering streets would not warrant imposing them for encroachments upon streets.—Grand Rapids v. Hughes, 15 / 54; Highway Commissioner v. Withey, 52 / 51. To make the obstruction of a way an indictable offense, it must injuriously affect some right in which the public in their aggregate capacity have a common

interest as distinguished from a mere individual or private right. If it affects only the rights of an individual, or of a definite number of persons, less than the whole, in their individual capacity, no indictment lies.—People v. Jackson, 7 / 432. The owner of the soil may use the road in any way which does not interfere with the public convenience.—Clark v. Ice Company, 24 / 509; People v. Foss, 80 / 559; Marquette and Western R. R. Cases, 62 / 29 and 47. Trees of the highway are the property of the adjacent owner. They are a nuisance only when they constitute an actual injury or obstruction. If in such case they must be removed, the owner has a right, and must be afforded reasonable opportunity to take them as living trees and transplant them elsewhere; the commissioner has no right to sell them and is liable in trespass for wanton removal.—Clark v. Dasso, 34 / 86. See Sections 183, 187-8, 203. Whether an encroachment exists is within the province of the commissioner to determine; until he complains, no one else can do so.—Township of Lebanon v. Burch, 78 / 642; White v. High. Com'r, 95 / 288; Greenfield Twp. v. Norton, 111 / 55. This does not abrogate the common law remedy of abatement of nuisances by the mere act of individuals.—Neal v. Gilmore, 141 / 519. An unauthorized obstruction across a public street is a public nuisance which any citizen desiring to travel along the street may abate.—Id. It is a nuisance to obstruct a highway by constructing a fence across it and a bill lies to enjoin the maintenance of the same. —Hinckley v. Dennison, 169 / 361. Title by prescription to portion of street as originally dedicated.—Werner v. Hinz, 172 / 360.

ORDER FOR REMOVAL: The order must specify the width of the road, the greatest extent of the encroachments and of what it consists; the place or places encroached upon, with reasonable certainty, and in what direction and how far it extends beyond the line of the highway.—People v. Smith, 42 / 138; Gregory v. Knight, 50 / 63; Township of Lebanon v. Burch, 78 / 641. And the party encroaching is not in fault until such notice is served.—People v. Smith, 42 / 138, and 78 / 641. Nor can he be called upon to remove anything not distinctly located by the notice.—Id. And if the notice is defective in that regard, the thirty days do not begin to run until the notice is perfected.—People v. Smith, 42 / 138. This statute purposely names the occupant of land as the proper person to proceed against for the removal of an encroachment on the adjoining highway.—Krueger v. LeBlanc, 62 / 70. Where the title to the land is in the wife, by an unrecorded deed from the husband, a commissioner's order to remove a fence from the highway is properly served on the husband as occupant of the land.—Id. See Neal v. Gilmore, 141 / 519.

MISCELLANEOUS: Surveyors and commissioners of highways have no greater right than other persons to determine starting points and boundaries; they cannot disturb vested rights in land or settle controversies as to titles and their ex parte action is entitled to no special authority in regard to true lines and the fact of encroachment.—Gregory v. Knight, 50 / 61. Any person or corporation in this State who claims authority to obstruct a public street by erecting a gate across it, whether he or it exacts toll for the use of the street or not, must show some grant either directly or mediately from the legislature.—Plank Road Co. v. Hilton, 69 / 115. The abutting land owner, as to other private individuals, has exclusive right to harvest grass in the highway; and can protect it against wanton or malicious damage, and maintain trespass or trover against any person cutting and taking it away against his will.—People v. Foss, 80 / 559. Any disposition of snow cleared from a street railway track must be made with due regard to the rights of travel on the highway.—Wallace v. Detroit City Ry. Co., 58 / 231. Injuries caused by removing planking from a highway culvert without erecting barriers, see Briggs v. Pine River Twp., 150 / 480. Failure of the officers of a township to take steps to prevent the unauthorized building of a street railroad in its highway, or acquiescence therein, does not estop the township from maintaining a bill in chancery to compel removal of the tracks.—Bangor Twp. v. Bay City Traction Co., 147 / 165.

1598. Forfeiture for Failure to Remove Encroachments.—If such encroachment shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time during which such encroachment shall continue unremoved, to be recovered in an action of trespass before any justice of the peace of the township, or of an adjoining township in the same county, and the commissioner may proceed to remove such encroachment in the same manner that he may do in case of the opening of a highway, and the person at fault be liable for the costs and expenses of such removal. The highway commissioner shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this and the preceding sections of this chapter, and shall present a full and complete statement thereof, together with a full and legal description of the lands entered upon, to the occupants of such lands, the said statement having been duly verified by the oath of the highway commissioner, requiring the said occupant to pay the amount therein set forth, and in case such occupant shall refuse or neglect to pay the same within thirty days after such notice and demand, the highway commissioner shall present a duly verified copy of said statement to the township board of the township in which such expense was incurred, for their examination and action thereon, and if the said township board shall so recommend, the supervisor of the township shall cause the

amount of all such costs and expenditures to be duly assessed and levied on the lands described in the statement of the commissioner of highways, which sum so assessed and levied shall be collected in the same manner as delinquent highway taxes are collected, but no person shall be required to remove any fence under the provisions of this section between the first day of May and the first day of September unless such fence shall have been made within three months next before the making of the order for the removal thereof: Provided, That if the person upon whom the copy of such order shall be served at any time before the expiration of said thirty days, by a written notice served upon the commissioner, deny such encroachment either in whole or in part, or shall deny the existence of a highway where such encroachment is claimed to exist, the commissioner, instead of proceeding to remove such encroachment, shall commence an action of trespass against the person upon whom the copy of such order was served, as hereinafter provided. Id., Chap. VII, Sec. 2. § 4402.

The thirty days will not begin to run on a defective notice.—People v. Smith, 42 / 138.

REMEDY FOR ENCROACHMENT: The action of trespass for encroachments on a public highway does not lie where the notice to remove them shows that the alleged encroachment is caused by fences entirely obstructing the road.—High. Comrs. v. Withey, 52 / 50. For proceedings in such a case see Id. Also Grand Rapids v. Hughes, 15 / 51 and Section 181. When a highway commissioner's order is disregarded his remedy is specifically prescribed, and no remedy in any other form is well calculated to reach the desired result.—Township of Lebanon v. Burch, 78 / 642. In proceedings to remove an encroachment a highway commissioner is justified only in the fact that the highway is encroached upon.—Gregory v. Stanton, 40 / 271; Krueger v. LeBlanc, 62 / 71. He is liable for any trespass he may commit if it proves not to be a highway and an encroachment thereon.—Krueger v. LeBlanc, 62 / 71. So long as the true location of the highway is in question, such proceedings cannot be taken.—Gregory v. Stanton, 40 / 271. Nor when there is a dispute in good faith as to the existence of the highway.—Wilson v. Gifford, 42 / 454; Campau v. Button, 33 / 525. Such existence must be settled in some other way.—Campau v. Button, 33 / 525. And the public authorities have no right to make entry where the existence is in dispute.—Clark v. Ice Co., 24 / 509.

The statute of 1861 allowed proceedings to recover for obstructions to highways only for highways that had been "laid out and opened."—Parker v. People, 22 / 93; Roberts v. Highway Commissioners, 25 / 23.

MISCELLANEOUS: The occupant of land charged with an encroachment upon a highway is not called upon to serve upon the commissioner a notice denying the existence of such highway until after he is served with a copy of the commissioner's order for the removal of the alleged encroachment.—Osborn v. Longsduff, 70 / 127. The penalty for obstructing a highway cannot be enforced by indictment or information.—Pettinger v. People, 20 / 336. In an action of trespass against a commissioner of highways, for removing a fence which he claimed was an encroachment upon a regularly laid section line highway, and so described it in the order for removal the commissioner can only justify by showing that the highway is located upon the section line, and a contrary finding by the jury entitles the plaintiff to a verdict.—Cronenwaite v. Hoffman, 88 / 617. A highway commissioner, claiming an encroachment on the highway, served an order for the removal of a fence thereon. No denial being served, the commissioner removed the fence. Held, that in trespass for so doing, the order alone was no proof of the fact stated in it that the fence was in the highway, and, in absence of such proof, furnished no justification to the commissioner.—Labo v. Asam, 143 / 24. See Watz v. Sunderland, 147 / 96.

1599. Action Shall be Brought by Commissioner.—Such action shall be brought by the commissioner in his name of office, claiming nominal damages only in the sum of six cents, before any justice of the peace of the township, or of any adjoining township in the same county. The declaration in such action shall follow the order required by section one of this chapter, in describing such encroachment; and the defendant may plead denying the encroachment in whole or in part, and may also deny the existence of a highway where such encroachment is claimed to be; if he shall have denied the same in the notice which, by the last preceding section, he may serve upon the commissioner, and shall have set the same up in defense at the time of joining issue, and the pleadings of either party may be amended in all respects as provided by chapter two hundred and eighty-four of the compiled laws of eighteen hundred and ninety-seven; but otherwise the legal existence of the highway shall not

be questioned on the trial, and the fact of such encroachment, and where the true line of the highway is, shall only be tried. Id., Chap. VII, Sec. 3. § 4403.

Chapter 284 of C. L. of 1897, above referred to, was repealed by the Judicature Act of 1915 and reenacted as § § 12264 to 12267 and § § 12478 to 12485, C. L. of 1915.
PROCEEDINGS: This and the two sections following furnish an adequate remedy for removing encroachments upon township highways and leaves no occasion for resort to equity.—Township of Lebanon v. Burch, 78 / 641. For summary of general propositions relating to encroachments and equity jurisdiction, see Id. Proceedings to remove encroachments from a public highway must be quashed where neither the notices given nor the finding of the jury furnish any means of finding the extent of the encroachment or its distance from what is said to be the true line of the highway.—Gregory v. Knight, 50 / 61. The intention of this section, providing for an action of trespass where an alleged encroachment upon or the existence of a highway is denied, is to have an exact conformity between the order for removal and the declaration, which pleading is intended to be in writing, and, if verbal, must be equally specific.—LeBlanc v. Grueger, 75 / 561. Defective description in declaration.—Graham v. Langston, 65 / 45. As to actions involving the title to land, see LeBlanc v. Krueger, 75 / 561.
Existence of highway denied.—Scheimer v. Price, 65 / 638; Osborn v. Longsduff, 70 / 126; Wyman v. St. Johns Village, 100 / 571.

1600. Summons, Finding of Jury, Etc.—The summons in such action may be in the same form, and shall be issued and served, and a jury shall be impaneled when demanded, and all proceedings had as near as may be, as in cases of personal actions of trespass, and full costs shall be taxed by the justice and paid by the losing party, except that if the commissioner demands a jury he shall not be required to advance the jury fee, and the adjournment of the trial shall not exceed ten days in all. The jury shall specify in their verdict, if they find the defendant guilty of causing or maintaining the encroachment as charged, and the extent thereof, and if the existence of the highway has been denied, they shall also specify, if they find a highway to exist, whether it be such by public use or by having been regularly laid out and established as a public highway. In the trial of any cause involving the existence of any highway, the burden of proof shall be upon the contestants to show that the same has not been regularly laid out and established as a public highway, or has not become such by public use.—Id., Chap. VII, Sec. 4. § 4404.

In proceedings to remove encroachments from highways the jury cannot pass upon anything that is not complained of.—Gregory v. Knight, 50 / 61. Disputes concerning private estates or boundaries cannot be determined in special and summary proceedings for the removal of encroachments on highways; such proceedings will lie only where there is no real question as to the existence and bounds of the highway. Title to land can only be determined by the judicial courts.—Id. This statute permits a jury to award both damages and costs against the person complaining of an encroachment on the public highway, if the encroachment is not proved; but on certiorari the supreme court has no authority to award anything but costs.—Gregory v. Knight, 50 / 62. Damages for obstructing a highway so that plaintiff could not draw wood to market cannot be measured by the quantity plaintiff could have got out with the unobstructed use of the road unless there is evidence that he desired to get it out and could and would have sold it but for the obstruction.—Wicks v. Ross, 37 / 464. This section plainly shows that the act is intended to protect highways that have become such by public use, no less than those laid out and established by law.—Krueger v. LeBlanc, 62 / 79.

1601. Appeal to Circuit Court.—Either party may appeal to the circuit court of the proper county in the same manner that appeals are taken from justices' courts in other cases, but in case of an appeal taken by the commissioner he shall not be required to pay the costs or furnish an appeal bond. In case of such appeal, trial shall be had on the issue joined in the justice court, and in case of a judgment in any court against the commissioner, no execution shall issue, but the judgment shall be certified to the proper supervisor and the amount thereof assessed and collected as in case of judgments against townships. Id., Chap. VII, Sec. 5. § 4405.

ACTIONS ON APPEAL: Certiorari to review proceedings to remove an encroachment upon

an asserted highway, will not be dismissed on the ground that the plaintiff in the writ does not appear by the record technically and formally, as an original party, when it is apparent he has rights which were affected by the proceedings, and that he was treated and recognized throughout as a substantial party.—Campau v. Button, 33 / 525. A writ of certiorari to review proceedings before a justice of the peace and a jury must be directed to the justice, and if necessary to bring up the final action of the commissioners or the documentary evidence annexed to it, to them also. The township clerk is not a member of the board of commissioners; and a record of their proceedings made up by him, the service of a writ of certiorari directed to them, upon him, and a return thereto by him, are each without authority of law.—Roberts v. High. Comrs., 24 / 182. The requirement that the "trial shall be had on the issues joined" is mandatory, and precludes the amendment of a declaration, where the same wrongfully described the location of the highway.—Graham v. Langston, 65 / 45.

1602. Removal of Encroachments After Judgment.—In all cases of final judgment against any person for causing or maintaining an encroachment, the commissioner may proceed to remove the same within ten days after such judgment, in the same manner that he may do under section two of this chapter (Section 1598 of this Guide), where the encroachment or the existence of the highway is not denied, and the penalty prescribed in said section two shall attach and continue from and after the expiration of the thirty days mentioned therein, until such encroachment be removed: Provided, That in all cases of final judgment against any person or persons for causing or maintaining an encroachment or obstruction upon the highway, if such person or persons shall, subsequent to such final judgment, by force or otherwise, interfere with the commissioner of highways in the performance of his duties under this act, or if such person or persons shall place or cause to be placed any of the encroachments or obstructions which had been removed, or in any way interfere with the said highway, the highway commissioner may, upon complaint duly made before any justice of the peace of said township or of an adjoining township, cause the arrest of such person or persons, and if a conviction shall be had under such complaint made of the offense charged therein, such person or persons having been adjudged guilty, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. Id., Chap. VII, Sec. 6. § 4406.

1603. Width of Highways.—All public highways for which the right of way has at any time been given or purchased for a highway sixty-six feet wide, shall be and remain sixty-six feet wide, and no encroachments by fences, buildings or otherwise which may have been made since the purchase or gift of such sixty-six feet, nor any encroachments which were within the limits of such sixty-six feet at time of purchase or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon. Id., Chap. VII, Sec. 7. § 4407.

1604. Setting of Poles or Posts in Highway.—No person or persons, firm or corporation shall have the right to set a pole or poles along the line of any public highway, within twenty-five feet of the center of the highway on either side, without the consent of the township board in the township in which such highway is located and where such pole or poles are to be set; and in no case shall the poles be set within fifteen feet of the center of the highway on either side. Id., Chap. VII, Sec. 8. § 4408.

For an act authorizing township boards to grant the right to use the highways, etc., of any township for poles, wires, conduits, etc., see Act 266, P. A. 1909, being Sections 59 to 63 of this Guide; for an act giving the Michigan railroad commission supervision over transmission of electricity in highways, see Act 106, P. A. 1909, being § § 4842 to 4850, C. L. of 1915.

1605. When Commissioner May Remove Encroachments, Poles or Posts.—Any party or parties, firm or corporation violating any of the provisions of this act, shall, upon demand of the township highway commissioner of the township in which such highway is located, remove such encroachments, poles or posts. If removal be not made within thirty days after written demand be made by the said highway commissioner, then the said commissioner shall have the right to remove such encroachments, poles or posts and the party, parties, firm or corporation, so violating, shall be liable for the amount of expense incurred in making such removal. Id., Chap. VII, Sec. 9. § 4409.

1606. Obstruction by Building in Process of Moving.—If any building or other serious obstruction shall, in the process of moving, be left in the highway, so as to interfere with the travel thereon, the commissioner may notify the person at fault to remove the same within two days, such notice to be either verbally or in writing, and if such obstruction be not removed pursuant to such notice the person at fault shall be liable to a penalty of five dollars per day for each day that the same shall remain unremoved, and after seven days the commissioner may proceed to remove it. Id., Chap. VII, Sec. 10. § 4410.

1607. Removal of Logs, Cordwood, Etc.—In case any saw logs, cordwood, or other loose obstruction shall be upon any highway, the commissioner may notify the owner, if known, to remove the same within three days, and if not so removed, or the owner is unknown, the commissioner may remove such obstruction to some convenient place, and if it have a value he shall hold it for thirty days subject to the order of the owner upon payment of the necessary expenses of removal, after which time he may sell the property removed, and such sale, notice of sale and application of the proceeds thereof shall be the same as is now required by law of constables on sale under execution, and the expense of removal, care of property and sale shall be deducted from the proceeds of sale, and the balance paid to the owner of such property, or deposited with the township clerk to be by him paid to the owner. In case the article or thing have no value or is not of sufficient value to pay for the removal, the commissioner shall be entitled to compensation for the expense of removing it, to be audited and allowed by the township board, and the expense of removal may be recovered from the owner in the name of the township in an action of assumpsit. Id., Chap. VII, Sec. 11. § 4411.

As to the right of an adjoining property owner to put stone, wood-piles, brush-heaps, etc., in the highway, see Bennett v. Hazen, 66 / 657. The unauthorized or excessive use of a portion of the public highway by an abutting owner in putting lumber or material thereon is a matter that falls within the cognizance of the police power, and it has nothing to do with the duty to make or repair highways.—McArthur v. Saginaw, 58 § 357.

1608. Removal of Fences Along Highways.—Upon the petition of twenty freeholders, residents of the same township, addressed to the highway commissioner of their township, stating that any particular fence other than a stone or hedge fence, along any highway within their township, by reason of its construction or otherwise, is dangerous either of itself or by reason of causing obstruction to the highway, it shall be the duty of the said township highway commissioner to notify the owner, or the occupant of the premises whereon said fence is located, to remove the said fence. Upon the neglect or refusal of the said owner or occupant to remove said fence within thirty days after such notice, it shall be the duty

of the highway commissioner to remove, or cause to be removed, the said fence, and the expense incurred thereby shall be paid from the general fund of the township, and all costs thereby incurred shall be assessed against the property whereon such fence was located, and shall constitute a tax against said property, to be levied and collected as other township taxes are assessed, levied or collected: Provided, That any owner or occupant of any land who, having received notice to remove any fence, deeming himself aggrieved, shall have the right to appeal to the township board, such appeal to be in writing and served upon the township clerk within ten days of the receipt of said notice. Upon said appeal it shall be the duty of the township board to carefully determine the facts concerning the removal of said fence, and shall either dismiss or confirm the order of the highway commissioner as to the removal of such fence. The township board shall award any damage to such owner or occupant for the removal of such fence, as in its judgment seems just, and such reward shall be paid from the general fund of the township. Any person conceiving himself aggrieved by the order, determination or award of the township board, may appeal therefrom to the circuit court of the county in which such township is situated; such appeal to be taken and perfected in the same manner as is provided by law with respect to appeals from justices' courts. The issue shall be as to whether such fence should be removed, and if removed, the damages to which the owner is entitled. Id., Chap. VII, Sec. 12. § 4412. [See Forms Nos. 113, 114 and 115.]

1609. In Counties Operating Under County Road System.—In counties operating under the county road system, upon a petition of twenty freeholders, each of whom are the owners of property abutting upon a part of the county road system of said county, and being residents of the same county, addressed to the board of county road commissioners of their county, stating that any particular fence, other than a stone or hedge fence, along any highway adopted as a county road within their county, by reason of its construction or otherwise, is dangerous either of itself or by reason of causing obstruction to the highway, it shall be the duty of the said board of county road commissioners to examine said fence and if, in its opinion, said fence is dangerous either in itself or by reason of causing obstruction to the highway, said county road commissioners shall notify the owner or the occupant of the premises whereon said fence is located, to remove said fence: Provided, however, That nothing contained in this act shall operate to cause the removal of any fence along any highway, between April first and September thirtieth in any year, without the written consent of the said owner or occupant. Upon the neglect of the said owner or occupant to remove said fence within sixty days after such notice, if he shall not have taken an appeal as hereinafter provided for, it shall be the duty of the board of county road commissioners to remove or cause to be removed the said fence, and any material removed shall thereupon become the property of the county to be sold or otherwise disposed of by the said board of county road commissioners, and any expenses incurred in the removal of said fence shall be paid from the county road fund of the county upon a warrant drawn by the proper officer: Provided, That the owner or occupant of any land, upon which any such fence is located, or any person, having received notice to remove any fence, deeming himself aggrieved, shall have the right to appeal to the

board of supervisors of said county. Such appeal shall be in writing and served upon the county clerk within ten days of the receipt of said notice upon said appeal. It shall be the duty of the board of supervisors at its first meeting thereafter, to carefully determine the facts concerning the removal of said fence; and the board of supervisors may confirm, reverse or modify the order of removal of said fence and shall award any damage to such owner or occupant for the removal of said fence, and shall also award to the person so aggrieved all or any part of the expense incurred by reason of such removal, and of the erection of a suitable and lawful fence in the place of the fence removed or ordered to be removed. Such award shall be paid from the county road fund of the county: Provided, That any person deeming himself aggrieved by the award of damages by the board of supervisors, shall have the further right to appeal therefrom to the circuit court of the county, and said appeal shall be governed by the rules of practice, the same as appeals from the justice court to the circuit court for civil cases, as far as the same can be made applicable, and it shall be the duty of such circuit court to hear such appeal and to determine the amount of damages to be allowed in such case: Provided further, That it shall hereafter be unlawful for any person, firm or corporation to erect a fence along the county road, of any material, other than a stone or hedge fence which, by reason of its construction or otherwise, is dangerous in itself or by reason of causing an obstruction to the highway. Id., Chap. VII, Sec. 13. § 4413.

1610. Penalty.—Any person, firm or corporation erecting or causing to be erected any fence contrary to the provisions of the preceding section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifteen dollars, nor more than fifty dollars, or by imprisonment in the county jail for a period not exceeding thirty days. Id., Chap. VII, Sec. 14. § 4414.

1611. Jurisdiction in Chancery in Cases of Encroachment.—Circuit courts in chancery have jurisdiction and authority to hear and determine all cases of encroachments upon the public highways, streets, and public alleys in organized townships, incorporated villages and cities in this State. Such suits may be instituted in the corporate name of such townships, villages and cities. § 12302, Subd. 1.

1612. Jurisdiction of Justices of the Peace.—Justices of the peace may have jurisdiction in actions for damages resulting from obstructions to highways, subject to the restrictions prescribed in section one of this chapter. § 14169.

"Section one," above referred to, limits jurisdiction to cases where damages do not exceed $100.

CHAPTER IX.

ERECTION, REPAIRING AND PRESERVATION OF BRIDGES

1613. Building and Repairing of Bridges.—The commissioner of highways shall have the care of the building, rebuilding and repairing of all bridges within his township, but he shall not have the right to build new bridges to exceed fifty dollars in cost, without the approval of the township board, or of a majority of the electors of the township voting thereon. Act 283 of 1909, Chap. VIII, Sec. 1. § 4415.

See Section 4394 as to bridges of greater than 30-foot clear span on state reward roads;

and Section 4854 as to such bridges on trunk line highways.

See Section 1625 of this Guide as to width of bridges, etc.

BRIDGES: Highway commissioners have no authority to involve the township in debt, at their discretion, for building bridges.—Hosier v. Higgins Twp. Bd., 45 / 340. Highway commissioners will not be compelled by mandamus to cause a bridge to be built in the place of one which has been destroyed, where the cost greatly exceeds the amount prescribed by the statute.—Goodsell v. Post, 30 / 353; neither will the supreme court interfere by mandamus to compel a township to repair a public bridge.—Perrine v. Hamlin, 48 / 641; Travis v. Skinner, 72 / 152. The town authorities have no right to build a bridge across a navigable stream without the sanction of the board of supervisors.—Const. Art. 8, Sec. 14; Stoffiet v. Estes, 104 / 208. Discretion of township authorities.—Kingsley v. Nyland, 136 / 535. See § § 4519-21.

CONTRACT FOR CONSTRUCTION: Highway commissioners have no authority to contract with persons who have not themselves bid for work that under the statutes can only be let on sealed proposals.—Beard v. DeGoit, 58 / 245. The use of a bridge by the people of the township, when traveling upon a public highway cannot be construed as an act of acceptance of the work done in building the bridge; the proper parties to ratify a contract are those only who could in the first instance have lawfully made the contract.—Taymouth v. Koehler, 35 / 22. The board of highway commissioners having under the statute authority without a vote of the people in certain cases to repair or reconstruct bridges, a person entering into a contract with one of its members, which upon its face appears to be within the authority of the board, has a right to assume that the contract is in fact as in appearance a proper one; and if he goes on and in good faith furnishes material under such contract, he will be entitled to recover therefor in case the commissioner was authorized by the board to make such contract, or if his action was afterwards ratified by the board.—Id. The board of highway commissioners may ratify an unauthorized contract for doing work which is within their general powers to contract to have done, either while the work is in progress or after it is completed, by action at a meeting held pursuant to previous notice, or at a meeting of all the members without notice, and the township will be bound by their action; but the members of the board severally have no such power.—Id.

NECESSITY: Held that the rebuilding of a bridge was a necessity where the same had been maintained for a number of years.—Brophy v. Schindler, 126 / 342. The rebuilding of a bridge is a necessity, unless proper proceedings are taken to discontinue the highway.—Berube v. Wheeler, 128 / 37.

1614. When Exigency Requires Greater Expenditure for Bridges or Roads.—Whenever, in the opinion of the commissioner, an exigency exists requiring a greater expenditure than has been provided for by the electors or township board, as authorized by chapter two of this act for the building, rebuilding or repairing of any bridge or bridges, road or roads in his township, or whenever he shall be petitioned in writing by not less than fifteen freeholders thereof, he shall notify the township clerk thereof in writing, and the said clerk shall, within five days thereafter, call a meeting of the township board to consider the matter of said notice. And in case the exigency shall be deemed to exist, the commissioner, with the township board, may order that any sum not exceeding one thousand dollars shall be raised in addition to that already provided for, and if, in the opinion of the said commissioner and township board, it shall be necessary to raise more than one thousand dollars, the said township board may order that the question of raising money for such building, rebuilding or repairing be submitted to the electors of said township. If the order be made within one month preceding the annual township meeting the question shall be submitted at such meeting, but otherwise a special meeting may be called and the township board may determine the form of notice as prescribed in the next section, and at such meeting the electors may vote a sum, not exceeding one-half of one per centum in any one year on the assessed valuation of the real and personal estate of such township, as may appear by the then last assessment, for the purposes in this section specified. Id., Chap. VIII, Sec. 2. § 4416.

OPINION OF COMMISSIONER: The opinion of the commissioner of highways as to the cost of repairing a bridge must prevail, and mandamus will not be granted to compel such repairs at his own motion, where in his return he shows that in his opinion the cost will exceed $1,000.—Travis v. Skinner, 72 / 152; Bigelow v. Brooks, 119 / 208; Berube v. Wheeler, 128 / 35. See Pearl v. Benton Twp., 136 / 697.

MEETING OF BOARD: There should be proper written evidence placed on file or on record, showing that the requisite statutory preliminary requirements to a legal meeting have been complied with and showing that such a meeting has been held and the proceedings

thereof.—Taymouth v. Koehler, 35 / 25. The record must show all statutory requirements complied with.—Loomis v. Rogers Twp., 53 / 142.

See Sections 146 to 152 of this Guide relative to the building of bridges, situated in more than one township, etc., when any township is unwilling to contribute its just share. See also Ionia Co. Suprs. v. Judge, 134 / 416.

1615. Vote on Question of Exigency Road or Bridge Tax.—Notice of such vote to be taken, whether it be at an annual or special meeting, shall be given in the manner and for the length of time prescribed by law for holding special township meetings; and such notice shall state the amount of such proposed tax, and the bridge or bridges, road or roads, for the building, rebuilding or repair of which the money proposed to be raised is to be applied. The vote in such cases shall be by ballot, and the ballots shall express "For the bridge tax," or "Against the bridge tax;" "For the exigency road tax," or "Against the exigency road tax" and the result shall be as a majority of those voting shall determine. Elections for such purpose shall be conducted, and the result ascertained and certified, in the manner provided by law for annual and special township meetings. Id., Chap. VIII, Sec. 3. § 4417.

1616. Commissioner May Draw Orders in Anticipation of Tax.—Any moneys that may be voted pursuant to the last two preceding sections shall be reported to the supervisor and included in the next ensuing tax levy, and the commissioner may draw his orders upon the township treasurer for the amount so voted in anticipation of the collection of such moneys, such orders to be applied to the purpose for which such moneys were voted, and to no other purpose. Id., Chap. VIII, Sec. 4. § 4418.

1617. County Bridge Tax.—The board of supervisors of any county may cause to be raised and levied upon the taxable property of the county a sum not exceeding one thousand dollars in any one year, to be apportioned among the several cities and townships of the county in proportion to the amounts raised in such cities or townships for bridge purposes, in excess of three hundred dollars, and such moneys when collected shall be paid to the treasurer of the township or townships where the same are to be expended, and applied by the commissioner of highways of such township to the purposes for which the same was raised. Id., Chap. VIII, Sec. 5. § 4419.

See Kingsley v. Nyland, 136 / 538.

1618. Commissioner May Act to Protect Bridges.—The commissioner of highways may erect any piers or booms, or drive any piles, or do any other act not incompatible with the general laws of this State, when necessary for the protection of bridges over any streams in his township against injury from the running of logs, or running or rafting of timber or lumber, or against freshets, or any other cause, in cases where the same can be done without any material obstruction to the navigation of any stream. Id., Chap. VIII, Sec. 6. § 4420.

1619. Commissioner to Post Notices as to Fast Driving on Bridges.—The commissioner of highways of any township, or common council of any city or village, may put up and maintain, at the expense of their township, city or village, in conspicuous places at each end of any bridge in such township, city or village, maintained at the public charge, and the length of whose chord is not less than twenty-five feet, a notice with

the following words in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk;" and in case such bridge shall be over one hundred feet in length, or shall have a draw or turntable therein for the purpose of opening the same, such notice may be: "Ten dollars fine for riding or driving on this bridge faster than a walk, or driving on more than ten head of cattle at a time," or such other sum, not to exceed twenty-five dollars, may be mentioned in such notice as such commissioner or common council shall deem proper. Id., Chap. VIII, Sec. 7. § 4421.

1620. Penalty for Fast Driving on Bridges.—Whoever shall offend against any such notice thus posted and there being, shall forfeit for every offense the sum mentioned in such notice, and the same may be collected in the name of such commissioner, city or village authorities, as the case may be. The provisions of this and the last preceding section shall extend to bridges owned and controlled by private persons, companies, or corporations, who are hereby vested with the same authority, touching said bridges, as are conferred upon townships and municipal corporations. Id., Chap. VIII, Sec. 8. § 4422.

1621. Construction of Bridge by Adjoining Townships.—Whenever the commissioners of highways of any two adjoining townships in different counties shall determine that an exigency exists requiring that a bridge should be constructed on or across the county line over any stream or sink-hole, either crossing or running along the boundary line between such townships, such bridge shall be built and maintained at the equal joint expense of such townships. The commissioners of the townships interested, either of whom may give notice to the other, of meetings of said commissioners for the purposes mentioned in this act, shall jointly agree upon the plans and specifications for such bridge: Provided, That no such bridge shall be built until the money necessary to cover the cost of same shall have been raised or provided for by vote of the electors of said adjoining townships as provided for in sections two and three of this chapter. Id., Chap. VIII, Sec. 9. § 4423.

Sections 2 and 3, above referred to, are sections 1614 and 1615 of this Guide.

1622. Money for Joint Bridge; How Raised and Disbursed.—The amount of money chargeable to any township on account of the construction of any such bridge, being ascertained as nearly as may be, shall be reported and raised in the same manner as in this chapter provided for raising money for bridge purposes in townships, and shall be held and disbursed by the treasurers of the respective townships, and shall be drawn only for the specific purpose for which it was raised, upon orders on such treasurers respectively, signed by such two commissioners jointly, and countersigned by the clerk of the township where such orders are payable, and having endorsed thereon the certificate of such two commissioners, certifying that the labor has been actually performed or the materials furnished for which such order was given. Id., Chap. VIII, Sec. 10. § 4424. See, also, Secs. 227 and 1614 of this Guide.

1623. Words Defined.—The word "townships" as used in the two last preceding sections, shall, for the purposes of this act, be deemed to include cities and incorporated villages, both in their relation to each other and to townships, and when the word commissioner is used with reference to

townships, it shall be deemed to include the corporate authorities of cities and incorporated villages. And such commissioners or corporate authorities may make such equitable contracts with the corresponding authorities in adjoining states, as will secure the construction and maintenance of bridges over streams crossing the boundary line between this State and such adjoining State, according to the purpose and intent of this act. Id., Chap. VIII, Sec. 11. § 4425.

1624. Authority Includes Rebuilding and Repair.—The authority conferred by the three last preceding sections for the construction of bridges shall be deemed to include their rebuilding and repair. Id., Chap. VIII, Sec. 12. § 4426.

1625. Width and Strength of Bridges.—There shall be no bridge, culvert or artificial roadway of any kind constructed in any public highway of this State, over any water course or railroad right of way thereof having a roadway of less than sixteen feet in width, and the same shall be built of sufficient strength to safely carry a fifteen-ton moving load. Id., Chap. VIII, Sec. 13. § 4427.

1626. Owners, Etc., to Build Bridge Over Mill Race.—It shall be the duty of all owners, occupiers, or possessors of mills or other water works, where any race or races appertaining to the same may cross a public highway, to keep a good and sufficient bridge or bridges, not less than sixteen feet in width, with a substantial railing on each side thereof, over the same, except where said mills have been erected and the races dug previous to the formation of said highway. Id., Chap. VIII, Sec. 14. § 4428.

BRIDGES OVER RACES: Width of bridges over mill race.—Merrill v. President of Kalamazoo, 35 / 217. The exception has reference to races existing when the highway was laid out; and where a dam and race were built at the same time and the earth taken from the race was used in construction of the dam which was intended to be and was thereafter used as a highway in place of a portion of an old road destroyed by its construction, and the water was not let into the race until after a bridge has been built over the race, which, with the dam, was used instead of the old highway and bridge, the owners of the mill are liable for its maintenance.—Com'r. of High. v. Martin, 88 / 115. If at the time the race was dug there was no traveled road within the limits of the highway crossing where the bridge in question was built, the mill owners cannot be held under the statute for the cost of building the same.—Merrill v. President of Kalamazoo, 35 / 212. A township can hardly be held liable for injuries caused by latent defects in a bridge over a mill-race where they do not affect the traveled part of the way and where the miller has apparently not been negligent in performing his statutory duty of looking after the condition of the bridge.—Abernethy v. Van Buren, 52 / 383. For provisions relative to the width of bridges, culverts, etc., see Section 147. The duty of mill owners to build and maintain a bridge over a mill race that crosses a public highway is a common law duty which is affirmed by the statutes of this State.—McRae v. Township of Hart, 179 / 325.

1627. Commissioner to Build Bridge if Owner Neglects.—In all cases where the owner or owners, occupiers, or possessors of any such mill or mills, or other water works, shall refuse or neglect to make such bridge or bridges, or shall refuse or neglect to keep the same in good repair, it shall be the duty of the commissioner of highways of the township in which such highway may be, to proceed forthwith to erect or repair such bridge or bridges, at the expense of the person or persons whose duty it was to have erected or repaired such bridges. Id., Chap. VIII, Sec. 15. § 4429.

The expenses so made or incurred by said commissioner of highways, in erecting or repairing such bridge or bridges, shall be a legal charge against the owner or owners, occupiers, or possessors of such mill or mills, or other water works; and it shall be the duty of the said commissioner of highways to prosecute the person or persons so chargeable

in an action of assumpsit, for the expenses so made or incurred, and to cause the damages recovered in such prosecution to be applied toward the payment of said expenses. Id., Chap. VIII, Sec. 16. § 4430.

Whenever an action of assumpsit shall be brought, under the provisions of this act, for the recovery of expenses made or incurred in erecting or repairing any such bridge or bridges, it shall be sufficient, without setting forth the special matter, to allege in the declaration that the defendant, being indebted to the plaintiff in the amount of such expenses, according to the provisions of this act, referring to the same by its title and date of approval, undertook and promised to pay the same to the plaintiff; and to every such declaration, the defendant may plead the general issue, and may give in evidence, under such plea, any special matter in bar of the action, or in discharge of the defendant, in the same manner and with like effect, as if a special notice thereof had been given. Id., Chap. VIII, Sec. 17. § 4431.

The commissioners are only authorized to do at the expense of the mill owners what is requisite to discharge their unperformed duty; and cannot charge them with the expense of building a bridge exceeding in width the statutory requirement.—Merrill v. President of Kalamazoo, 35 / 211. Upon the question of the existence and location of the highway at the time and prior to the construction of the race, an early territorial record of the survey of the road may be admissible in evidence, not as record proof of the establishment of the road, but as a permanent record of the line where the road was, its establishment being shown by other evidence.—Id.

1628. Approaches to Swing or Draw Bridges.—The corporation, firm or individual, owning or operating any bridge within this State, free or toll, used for public travel, in which there shall be a draw or swing span for the passage of water craft, shall cause to be placed upon the approaches to such bridge, at either end thereof, not farther than ten feet from the landward ends of such draw or swing span, a gate, gates or other barriers of not less than four and one-half feet in height, and of such design, shape and strength as to effectually bar the progress of teams, animals and foot passengers and prevent them from passing upon such draw or swing span when such gates or other barriers are closed. Id., Chap VIII, Sec. 18. § 4432.

A bicyclist, who, in the dark, rides off the end of an unguarded drawbridge open for the passage of a boat, is not, as a matter of law, guilty of contributory negligence.—Scharman v. Bay Co. Bridge Commission, 158 / 77.

1629. Penalty for Failure to Close Safety Gates.—Such gate, gates or other barriers shall be at all times closed before such draw or swing span is opened for the passage of water craft, or any other purpose, and shall be kept closed until such draw or swing is closed, and such bridge ready for public travel. And for each and every time that the draw or swing span of any such bridge is opened for the passage of water craft, or any other purpose, without such gate, gates or other barriers being closed, or without the same being kept closed during the entire time such draw or swing is open, the corporation, firm or individual owning or operating such bridge shall forfeit the sum of ten dollars, to be collected according to the provisions of chapter two hundred ninety-one of Howell's Annotated Statutes, being chapter two hundred sixteen of the compiled laws of eighteen hundred seventy-one and the amendments thereto. Id., Chap. VIII, Sec. 19. § 4433.

Chap. 291, of Howell's Annotated Statutes, above referred to, was repealed by the Judicature Act of 1915, and reenacted as § § 13393 to 13436, C. L. of 1915.

1630. Forfeiture for Failure to Maintain Safety Gates.—Any corporation, firm or individual owning or operating any bridge within this

State, used for public travel, having a draw or swing span therein, who shall neglect or refuse to construct and maintain such safety gate, gates or other barriers so directed as aforesaid, upon either end of such bridge, shall forfeit for every such neglect the sum of one hundred dollars, and the further sum of ten dollars for each day that such refusal or neglect shall continue, which said sum so forfeited as aforesaid shall be collected as provided in section nineteen of this chapter. Id., Chap. VIII, Sec. 20. § 4434.

1631. Duty of Prosecuting Attorney.—It is hereby made the duty of the several prosecuting attorneys of this State, to make personal inspection of all bridges lying wholly or partly within their respective counties, which have a draw or swing span therein, and if such gate, gates or other barriers have not been placed upon any such bridge, to at once proceed against the corporation, firm or individual owning or operating such bridge for non-compliance with this act. Such prosecuting attorneys shall be entitled to receive the sum of ten cents per mile, going and returning, for every mile necessarily traveled in making inspection as aforesaid of any bridge within their jurisdiction, to be paid by the county. Id., Chap VIII, Sec. 21. § 4435.

1632. Actions for Recovery of Penalties and Forfeitures.—Actions for the recovery of the forfeitures and penalties incurred by reason of non-compliance with the provisions of this act shall be brought before the circuit court or circuit court commissioner of the county in which such bridge or any part thereof is situate, but such trial shall be had by the court unless such defendants demand a jury. The fees of such commissioner, witnesses, officers and jury, if there be one, shall be the same as in criminal cases in justice courts, and shall be paid by the county. Id., Chap. VIII, Sec. 22. § 4436.

1633. Writ of Mandamus.—The circuit courts shall have power within their respective counties to compel compliance with the provisions of this act by writ of mandamus. Id., Chap. VIII, Sec. 23. § 4437.

1634. Fast Driving Over Bridges.—Whenever any county in this State shall own any bridge across a navigable stream the board of supervisors may make rules to prevent fast riding or driving thereon, and such reasonable rules as may be so made shall have full force and effect as to all persons passing over such bridge; and any person violating the same shall be liable to a penalty as hereinafter provided for such violation. Id., Chap. VIII, Sec. 24. § 4438.

No person shall be so liable unless those in charge of said bridge shall cause to be placed and maintained on said bridge a notice in large painted letters, as follows: "Five dollars fine for driving or riding faster than a walk on or across this bridge." Any person so offending shall be deemed guilty of a misdemeanor and, on conviction, shall be liable to a fine not to exceed five dollars, and in default of the payment of such fine, to imprisonment in the county jail for a period not to exceed ten days. Id., Chap. VIII, Sec. 25. § 4439.

1635. When Township to Build and Maintain Bridges in Villages.—The bridges within the limits of any village in the highways leading into or through said village which have been or shall hereafter be laid out by the commissioners of highways of the township or townships in which

said village may be located or established by any other lawful authority, except the authority of such village, shall be built, controlled and kept in repair by the township or townships in which they may be located, the same as if said village were not incorporated, and all the other bridges in said village shall be built, controlled and kept in repair by said village. Id., Chap. VIII, Sec. 26. § 4440.

1636. Intermunicipality Bridge or Road.—Whenever any township, city or such incorporated village as mentioned hereafter in this section, shall be desirous of having a bridge or road constructed, which would, when constructed, be in more than one township, or be partly in one township or more than one, and partly within a city or an incorporated village, or having any such road or bridge rebuilt or repaired, and any such township, city or village, shall fail upon request to join in building, rebuilding or repairing such bridge or road or to contribute its just share to the building, rebuilding or repairing thereof, any such township, city or village desiring the building, rebuilding or repairing of such bridge or road may, by its township board, its common council or village council, as the case may be, by petition, in the form of a resolution or otherwise, apply to the board of supervisors of the county for an order for the construction, rebuilding or repairing of such bridge or road, and for filing the respective proportions which each township, city and village shall contribute for the construction, rebuilding or repairing of such bridge or road and for keeping the same in repair, as well as for deciding the kind of bridge or road to be constructed. Id., Chap. VIII, Sec. 27. § 4441.

A majority of the board is sufficient to carry a resolution ordering a bridge to be built between adjoining townships.—Horner v. Bd. of Supervisors, 147 / 581.

1637. When Special Meeting is Had for Hearing Petition.—Unless such petition is to be presented to the annual meeting of said board of supervisors, or at an earlier meeting already appointed by the board, to be held at least thirty days prior to such annual meeting, it may contain a request for a special meeting of said board, and may be delivered to the clerk of said board, who shall have authority, and whose duty it shall be, to call a special meeting of said board not more than twenty nor less than ten days from the time he shall receive the petition, and it shall be his duty to inform all the members of said board to be found in the county, of such meeting, and the purpose thereof, at least five days before such meeting is to be held, and at whatever meeting such petition is to be heard, and it shall be the duty of such petitioners to give notice, in writing, to the township board of each township named and to the common council of any city, as well as to the village council of any village named, of their intention to ask for the hearing of the same at such meeting, and of the purpose thereof, which notice shall be delivered to the clerk of every such township, city or village, and if such clerk is not readily found, then to any member of the township board, or the mayor, or some member of the common council of the city, or a member of the village council, as the case may be, at least seven days before said board is to be asked to hear said petition. Id., Chap. VIII, Sec. 28. § 4442.

1638. Determination by Board of Supervisors.—At such meeting said board of supervisors shall have power, and it shall be their duty, to grant or refuse the prayer of said petition. And if they shall grant the same, they shall describe the kind of bridge or road to be built and the limit of

cost which it shall not exceed, and for the purpose of facilitating their determination of the kind and cost of the bridge or road or the building or repairing thereof, each township, city and village named in the petition may present a plan or plans and specifications of such proposed bridge or road or the building or repair thereof, with or without drawings, and an estimate of each as to cost. Said board shall also determine the quota or proportion which each township, city and village named shall contribute thereto, and whether the whole amount shall be raised the first year, or a part, and what part the first and what part the second year, but no part of it shall be deferred more than two years. They shall also determine the quota of each towards keeping the same in repair, which shall remain the same till altered by said board, or by the consent of each township, city and village, which is a party to this proceeding. Id., Chap. VIII, Sec. 29. § 4443.

Horner v. Board of Supervisors, 147 / 581.

1639. Collection of Tax for Intermunicipality Bridge or Road.—Upon determining that such bridge or road shall be built, rebuilt or repaired, and the other matters mentioned in the preceding sections, then said board of supervisors shall order the county treasurer to open an account with each township, city or village, whose quota they have determined, under the designation of "bridge or road fund" (naming the bridge or road), charging to each the quota so assigned by the board, which order such treasurer shall be bound to obey; and such board shall thereupon, through their clerk, within five days after such order, serve a copy of the same upon the officer and all officers of each township, city and village authorized by law to assess township taxes in such township, city taxes in such city, and village taxes in such village, as well as upon the clerk of each respectively, and upon the officer or officers in each township, city and village named, authorized by law to collect such township, city or village taxes respectively; and thereupon such assessing officer or officers shall be bound to assess and such collecting officer to collect in such several townships, cities and villages respectively the taxes for the same assigned to each respectively, as its quota for the year in which by the order of the board, the same is to be raised and this they shall proceed to do without the necessity of waiting any order therefor from any township, city or village authority. But each of said collectors shall, before proceeding to collect any such tax, give to the county treasurer a bond, with at least one good surety, in double of the amount of such tax to be collected by him for the year, and such collectors shall each be entitled to the same percentage or compensation as allowed by law for collecting township, city or village taxes respectively, which may be added to the tax by the collector if not included in the amount assessed. And the board of supervisors shall issue their warrants to each of said collecting officers for the collection of such taxes and require each of them to pay over the respective amounts to the county treasurer to apply on such bridge or road fund, which warrant shall give to each of said collecting officers the like powers and impose the like duties as are or may be given to or imposed upon those collecting township taxes except as herein otherwise provided. Each of such collectors shall, as required by his warrant, pay over all funds collected,

to the county treasurer and take his receipt therefor. Id., Chap. VIII, Sec. 30. § 4444.

1640. Building of Intermunicipality Bridge or Road.—Said board of supervisors may, as a board or through a committee of three of their members as their agent, at any time after they have made the order for raising such bridge or road fund by taxes as in their opinion the public convenience require, contract for the building, rebuilding or repairing of said bridge or road as an entirety, or for any material or labor for the same if they should prefer to build, rebuild or repair it without contract as a whole (in which case they or their committee may employ an overseer) but in all cases to be payable only out of said bridge or road fund when and as collected. If the building, rebuilding or repairing of the bridge, or road, including materials, is let by contract, notice of not less than three consecutive weeks of the time and place of letting shall be published in some newspaper printed in the county, if any, or if none is published in the county, then by written or printed notice posted for at least three weeks in three of the most public places in each township, city or village named in the petition, of the time and place at which contract shall be let. The board also, as such or through its committee of three acting as its agents, shall determine the amount and time when partial payments shall be made when this has not been fixed by special contract, as well as to determine when and whether such bridge or road or the building, rebuilding or repair thereof is completed according to the plan or according to contract. But if the township board of each township and the city or village council of each city or village, in behalf of which it was built, shall admit to such board or its said committee and agents, its full completion, this shall be conclusive of the question. Id., Chap. VIII, Sec. 31. § 4445.

1641. Expenses Allotted to Municipalities.—The board shall cause to be kept by its clerk a full account of all expenses to the county in carrying this act into effect in any such case, and when the bridge or road or the rebuilding or repair thereof is completed, they shall through their clerk, certify such amounts to the county treasurer, who shall charge in the account of such bridge or road fund to each township, city or village, its quota, in the same ratio established by the board for the bridge or road; and this amount together with any balance of the bridge or road fund unpaid shall be raised by tax by the order of the board in each township, city and village named, by tax to be assessed, collected and paid by the same officers and in the same manner as above required for the construction, rebuilding or repairing of said bridge or road. Id., Chap. VIII, Sec 32. § 4446.

CHAPTER X.

PRIVATE ROADS AND TEMPORARY HIGHWAYS.

1642. Constitutional Provisions Relating to Private Roads.—Private property shall not be taken by the public nor by any corporation for public use, without the necessity therefor being first determined and just compensation therefor being first made or secured in such manner as shall be prescribed by law. Private roads may be opened in the manner prescribed by law; but in every case the necessity for the road and the

amount of all damages to be sustained by the opening thereof shall be first determined by a jury of six freeholders or by not less than three commissioners, and such amount, together with the expense of proceedings, shall be paid by the person or persons to be benefited. Const., XIII, 1, 3.

1643. Commissioner to Give Notice of Application.—Whenever application shall be made to the commissioner of highways of any township for a private road, he shall give notice in writing to the owner or occupant of the land over which the road is proposed to be laid out, to meet on a day and at a place certain, which shall not be more than ten nor less than five days from the time of service of such notice, for the purpose of aiding in the striking of a jury to determine as to the necessity of such road; and if the land over which it is proposed to lay such road be nonresident and the owner thereof does not reside in the county, such notice shall be served in the same manner as is provided in case of bearing [hearing] on laying out public roads, and proof of such service or posting shall be made in like manner. Act 283 of 1909, Chap. IX, Sec. 1. § 4447. [See Form No. 116.]

As to passage ways to lands adjoining at a single point, see Section 1654 of this Guide.

PRIVATE ROADS: One who has already a private right of way is not obliged to wait until his easement expires before instituting proceedings to obtain a continuance of, or substitute for it, but may move a reasonable time before it expires.—Palmer v. High. Comr., 49 / 46. Ten days' notice.—Ayres v. Richards, 38 / 214. Ways must be either public or private; there is no intermediate species of ways for any purpose of passage.—Tillman v. People, 12 / 401. The statute designed to cure defects in the laying out and recording highways has no application to mere private ways, but is confined to public highways.—Green v. Belitz, 34 / 513. And a private way is not converted into a public way by user.—Id. Property cannot be condemned for a private way as a mere convenience, but only when there is no other access to the petitioner's land, and when condemned its use must be limited by absolute necessity and confined to the petitioner and the owner.—Ayres v. Richards, 38 / 214. The owner of a private road is entitled to make use of the same for any and all purposes for which a road may be used; he may fence it, macadamize, plank or pave it and do any other act which may be necessary to promote its beneficial use. The necessity and reasonableness of the means made use of to adapt the road to his use are questions of fact, to be determined by the trial court, and its findings in that regard are conclusive upon the appellate court.—Harvey v. Crane, 85 / 316. The owner of a forty-acre tract which is cut off from the highway by another forty-acre parcel which was at one time held by a common grantor, has a way of necessity across the intervening parcel to such highway; such owner of the easement is not required to resort to the condemnation of a private road under this section.—Moore v. White, 159 / 460.

TIME OF NOTICE: In a five days' notice it appears that both the day of service and the day of meeting would have to be excluded.—Platt v. High. Comr., 38 / 247.

1644. Selection of, and Citation of Jury.—At the time and place designated the commissioner shall direct some disinterested person to write down the names of twelve disinterested freeholders, from which list the owner or occupant of the land to be crossed by such road and the applicant for the road shall strike out three names each, and the balance remaining on the list shall form the jury. In case the owner or occupant or the applicant shall not be present, or being present shall neglect or refuse to strike, the commissioner shall strike for the party so absent or neglecting or refusing. The commissioner shall issue a citation to such freeholders to appear before him at a time certain within forty-eight hours to determine as to the necessity of such road and the damages resulting therefrom in case such road shall be deemed necessary, and the hearing of the application shall then stand continued until the time when the citation is returnable: Provided, however, That when from any cause a sufficient number of jurors to form a panel shall not appear at the given time, the commissioner may direct some disinterested freeholder to write down the names of disinterested freeholders enough to equal twice the number of vacancies to be filled. The commissioner shall strike

off one-half of the names from such list, and shall issue a citation to such freeholders to appear before him forthwith. Id., Chap. IX, Sec. 2. § 4448. [See Form No. 117.]

FREEHOLDERS: Jurors in proceedings to lay out a private way are not disqualified by having served in previous ineffectual proceedings, taken by the same person, for obtaining another right of way to reach the same lands.—Palmer v. High. Com'r., 49 / 45. Where a party to condemnation proceedings, instead of striking off a juror says he does not care which name is struck off and that the highway commissioner may strike one off himself, he cannot afterward object to the course taken.—Id. As to whether the person writing down the eighteen names, should accompany the list with a statement, or return that they are disinterested freeholders, see People v. Brighton, 20 / 57. The officer who summons the jury is bound to show by his return that he has summoned such as answer the description in the writ.—People v. Brighton, 20 / 71.

Note.—Previous to the amendment of this section, making the venire returnable in forty-eight hours, it was required that the same be returned forthwith. Under this former statute it was held, in the case above cited, that making it returnable the next day at one o'clock, sufficiently met the requirements. See Palmer v. High. Comr., 49 / 45.

1645. Jury to be Sworn.—Such freeholders, when met, shall be sworn by the commissioner well and truly to examine in regard to the necessity of such road, and in case they shall decide that such road is necessary, to justly and impartially appraise the damages of the owner or owners, or occupant of the land, by reason of laying out such road. Id., Chap. IX, Sec. 3. § 4449.

The jury must find the road to be laid necessary and that it is necessary to take the land in question, as well as determining the damages.—People v. Brighton, 20 / 71; Ayres v. Richards, 38 / 214; Rundell v. Blakeslee, 47 / 575. It is not enough to say that they "adjudge and determine that a private highway be established."—Rundell v. Blakeslee, 47 / 575.

1646. After Determination, Commissioner to Lay Out Road.—If the jury shall determine that the road so applied for is necessary, they shall make and subscribe a certificate of such determination, and also their appraisal of the damages, and shall deliver the same to the commissioner; and the commissioner shall thereupon lay out the road, describing the same particularly by its bounds, courses, and distances, and shall cause a record thereof to be made in the clerk's office of the proper township, which shall be recorded in the same manner as is required in the case of public roads. Id., Chap. IX, Sec. 4. § 4450. [See Form No. 118.]

Where the proceedings on certiorari show that no record was made and recorded in the office of the township clerk, the proceedings of the highway commissioner laying out the road, were quashed.—Hall v. Pettit, 88 / 158. Also proceedings were dismissed where the record contained no recital that eighteen disinterested freeholders were chosen, or that six names were struck off, or that a citation was issued by the commissioner to such freeholders, or that the jury were sworn, or that the commissioner proceeded to lay out the road.—Id. Proceedings will also be quashed where the record shows no evidence that the petitioner had no other access to his land.—Id. As to omissions from record, see also Taymouth v. Koehler, 35 / 22.

See Section 1470 and notes.

1647. Payment of Damage.—The damages awarded to the owner or occupant of the land through which such road shall be laid, when thus ascertained, together with the expenses of the proceedings, shall be paid to the commissioner by the person applying for the road, which damages shall be paid or tendered by the commissioner to such owner or occupant, and when so paid or tendered the commissioner shall proceed to open the road. Id., Chap. IX, Sec. 5. § 4451.

If the owner of the land taken accepts the compensation awarded by the jury he cannot afterward object to the competency of the jurors.—Chatterton v. Parrot, 46 / 432.

1648. Width of Private Roads.—Private roads shall not be less than one rod in width and when laid out as above provided, shall be for the use of the applicant, his heirs and assigns, but not to be converted to any other use or purpose than that of a road; but the owner or occupant of

the land through which such road shall be laid out shall not be prevented from making use thereof as a road, if he shall signify his intention of so doing to the jury at the time of laying out such road, and before the appraisal of the damages by them. Id., Chap. IX, Sec. 6. § 4452.

A private way cannot be converted into a public highway without compensation to the owner of the lands over which it runs.—Ayres v. Richards, 41 / 680. A private way across private property can be closed by the owner of the land; and the fact that after proceedings to lay out such a road as a public highway had been quashed, the owner still left it open and in public use, cannot be used to reduce his damages on later proceedings to open it to the public.—Id. The public are not entitled to use a private way unless it is dedicated to their use.—Ward v. Warner, 8 / 508.

1649. Application for Temporary Highway.—Whenever any owner of any timbered land, not less than forty acres, shall wish to have a temporary highway laid out, over which a logging railroad may be operated on conditions hereinafter stated, he may in writing make application to the commissioner of highways of the proper township for that purpose, who shall proceed to empanel a jury, or submit the matter to commissioners if the parties in interest so desire, and the proceedings shall be substantially the same as provided in this chapter for opening private roads. Id., Chap. IX, Sec. 7. § 4453.

Secs. 7, 8, 9 and 10 of this chapter, as originally enacted, were held unconstitutional.—Burdick v. Harbor Springs Lumber Co., 167 / 673.

1650. Determination on Application for Temporary Highway.—When any such application shall be made, the commissioner of highways of the township in which said road is to be located, shall give notice in writing to the owner and occupant of the land in substantially the same manner as provided in section one of this act for the purpose of aiding in the striking of a jury to determine as to the necessity of such road and to appraise the damages, or the parties in interest may agree upon three or more persons as commissioners to act in place of a jury to determine such necessity and appraise such damages. If it shall be determined that said temporary highway is necessary for the purpose of removing the timber from such lands, the jury or commissioners shall certify under their hands such determination and also their appraisal of the damages, and shall determine the length of time that such highway shall be necessary; and at the expiration of such time said highway shall cease, and the commissioner shall lay out the road in accordance with said determination, describing the same particularly, and shall cause a record thereof to be made in the clerk's office: Provided, That no logging railroad shall be operated upon or along any such temporary highways, except that during the fifteen years after the passage of this amendment permission may be given by the commissioner of highways to construct and operate such logging railroad, but such railroad shall not be operated or maintained after fifteen years from the passage of this amendment. Id., Chap. IX, Sec. 8. § 4454.

See note to preceding section.

1651. Consent of Owner Necessary.—No such highway or logging railroad shall be laid out along and upon and so as to occupy any road made or caused to be made by the owner of any land or by any person with the consent of such owner and used by the person or persons who made the same, unless such owner shall consent thereto in writing. Such temporary highways shall be private highways, and all the expenses of their

laying out, which expenses shall include the compensation due the highway commissioner, the jury or commissioners acting as such, for such services, and all damages that may be awarded on account of the taking of lands therefor, shall be paid to the commissioner by the persons applying for the same, and upon such payment they may enter upon, open and work such highways at their own and sole expense, but no trees shall be cut therein except as shall be necessary to make a track or tracks. Id., Chap. IX, Sec. 9. § 4455.

See note to Sec. 1649 above.

1652. If Road to be Used Only in Winter.—In case such highway is only to be used in the winter time such facts shall be set up in the application and also in the finding of the jury or commissioners, and this shall be taken into consideration in awarding damages to the owners of the land crossed. Id., Chap. IX, Sec. 10. § 4456.

See note to Sec. 1649 above.

1653. Appeal from Determination of Jury.—Any party in interest may appeal from the determination of the jury or commissioners in any proceedings under this chapter to the circuit court for the county, within thirty days, by filing with the township clerk an affidavit made by himself, his agent or attorney, stating that such determination is not in accordance with the just rights of such party, as the person making such affidavit verily believes. And said party shall also file with said clerk within said time a bond running to the highway commissioner for the benefit of all other parties in interest, conditioned that the appellant will prosecute his appeal with all due diligence, and that if a judgment be rendered against him in the circuit court he will pay such judgment, including all costs with interest thereon; which bond shall be in a penalty sufficient to secure the costs and damages and with one or more sufficient sureties, who shall justify their responsibility in writing and under oath endorsed on said bond. The appellant shall also pay to the township clerk the sum of one dollar for making his return on appeal, and also the further sum of three dollars as clerk and entry fee to be paid by said township clerk to the clerk of the circuit court. Said appeal shall be heard before the judge of the circuit court, and a jury of six freeholders selected by the parties from the regular panel under the direction of the circuit judge, in the manner jurors are selected in civil causes, or if the parties desire, by three commissioners to be appointed by the circuit judge. The county clerk shall act as clerk of the court the same as in other causes, and the proceedings as far as applicable shall be according to the ordinary course of civil procedure. The judgment and determination on appeal shall be certified back to the township clerk for any further proceedings that may be required by the statute. In case of more than one appeal they shall be heard together as one cause. Costs may be awarded by the circuit court and collected the same as on appeals from justice's court. On perfecting said appeal all proceedings shall be stayed and no further steps taken until the determination or dismissal of said appeal. No costs shall be awarded against any party, except such as actually appeal or defend such appeal. Id., Chap. IX, Sec. 11. § 4457.

1654. Passage Way to Lands Adjoining at a Single Point.—When lands owned in different descriptions by the same person, copartnership

or corporation, and are contiguous at the corners, or as more fully described at the points of intersection of description lines projected, a private road may be secured across the adjacent lands, not to exceed twelve feet on each side of the point of intersection, or a passsage way of twenty-four feet permitting ingress and egress. Application for such easement shall be made by the owner of such land contiguous at the corners, in writing to the highway commissioner of the township who shall act on such application in the manner prescribed in chapter nine of act 283 of 1909 (sections 1642-53 of this Guide). Act 393 of 1913. § 4860.

Act 283 of 1909, above referred to, is the General Highway Law, compiled in Part XV of this Guide.

CHAPTER XI.

PENALTIES AND FORFEITURES.

1655. Forfeiture for Neglect of Duty.—Any commissioner or overseer of highways, having accepted such office, shall, for every neglect of the duties thereof, forfeit the sum of ten dollars. Act 283 of 1909, Chap. X, Sec. 1. § 4458.

1656. Commissioner or Overseer May be Prosecuted.—Any commissioner or overseer may be prosecuted by information or indictment for any deficiency in the highways occasioned or continued by his fault or neglect; and on conviction thereof may be fined in any sum not exceeding fifty dollars. Id., Chap. X, Sec. 2. § 4459.

1657. When Commissioner to Prosecute Overseer.—It shall be the duty of the commissioner, whenever any competent resident of his township shall make complaint in writing that any overseer in such township has refused or neglected to perform any of the duties required of him by law, and shall give or offer to such commissioner sufficient security to indemnify him against the costs which may be incurred in prosecuting for the penalty annexed to such refusal or neglect, forthwith to prosecute such overseer in the name of the people of this State for the recovery of such penalty. Id., Chap. X, Sec. 3. § 4460.

1658. Obstruction of Navigation.—Whoever shall wilfully obstruct the navigation of any river or stream, which is now or may hereafter be declared a public highway, by felling any tree therein or by putting into any such river or stream any refuse lumber, slabs, or other waste materials, or who shall wilfully obstruct any highway, or fill up or place any obstructions in any ditch constructed for draining the water from any highway, or who shall injure any highway by diverting any creek, or by obstructing any water course or sluice, shall forfeit for every such offense a sum not exceeding twenty-five dollars. Id., Chap. X, Sec. 4. § 4461.

OBSTRUCTING HIGHWAYS: An unauthorized obstruction of a public street is a public nuisance, which any citizen desiring to travel along the street may abate, if he can do so without a breach of the peace.—Plank Road Co. v. Hilton, 69 / 115. Persons using public highways must use them with care and a due regard for the rights of others, and those who use them for the customary purpose of travel and passage have the first right, and their use must not be obstructed unless under exceptional circumstances.—Burford v. Grand Rapids, 53 / 98. The defense that a ditch laid along a public highway and used for draining water therefrom was not legally laid out and established cannot be pleaded in an action to recover the penalty by this section imposed.—Hines v. Darling, 99 / 47. The court has no power to direct a verdict for more than six cents; it is for the jury to say how much more the penalty shall be.—Id. It is "wilfully" obstructing a public ditch for one who knows its character to purposely and perversely fill it up in a permanent way. He may bridge it or grade the approach, but must not obstruct the ditch or the highway.—High. Comr. v. Ely, 54 / 173. The right of navigation, though paramount, is not exclusive, and cannot be so

exercised as to wantonly destroy private rights or property that can be enjoyed consistently with it, such as the right to maintain ice fields, or stake-nets, or to run logs, or establish boom limits and dock lines.—Ice Company v. Steamer "Excelsior," 44 / 229. "Free navigation" is not necessarily the unobstructed navigation of a stream in its natural condition.—Benjamin v. Manistee River Imp. Co., 42 / 628. It is not every obstruction to a highway that is a nuisance.—People v. Carpenter, 1 / 273, 288; People v. Jackson, 7 / 432. If any individual is injured by an obstruction he will have a right of action therefor.—Id., 7 / 432, 445. See Wicks v. Ross, 37 / 464; G. R. & I. R. R. Co. v. Heisel, 38 / 62. A party contributing to the obstruction of a way cannot recover damages against another contributing to the same obstruction, where the removal of the part caused by himself would afford him ample passage way.—Roberts v. Fitzgerald, 33 / 4. As to when obstructions are indictable and when not, see People v. Jackson, 7 / 432. Obstructing water-course, see Comr. of Highways v. Sperling, 120 / 493. The unlawful obstruction of a public highway is a penal offense, and it is the duty of highway commissioners to keep highways free from obstruction.—Fowles v. Hayden, 129 / 587. The owners of the soil is not punishable for a nuisance in using any part of a highway in such a manner as not to interfere with the public convenience.—Clark v. Lake St. Clair, etc., Co., 24 / 508. Action for recovery of penalty.—La Barre v. Bent, 154 / 520.

BOOMING COMPANIES: A boom company is liable in damages for needlessly or wilfully obstructing a navigable stream to the hindrance and consequent injury of persons driving their own logs.—Watts v. Tittabawassee Boom Co., 52 / 203. The private appropriation of a part of the bed of a small stream not navigable except for floatage is neither a purpresture nor a nuisance, nor a public grievance of any sort, unless the public use is thereby unreasonably abridged or inconvenienced.—Atty. Gen. v. Evart Booming Co., 34 / 463. Diversion of watercourse.—See Hilliker v. Coleman, 73 / 170.

See Section 1665 and notes to Sections 1597 and 1598 of this Guide.

1659. Injury to Mile-stone, Guide-post, Etc.—Whoever shall wilfully destroy, remove, injure, or deface any mile-stone, mile-board. guide-post, or guide-board erected on any highway, or shall wilfully injure or deface any inscription or device placed thereupon, or who shall wilfully injure or deface any watering-trough, basin, or fountain placed upon the highway for the use of the public or for ornament, shall forfeit for each offense the sum of twenty-five dollars. Id., Chap. X, Sec. 5. § 4462.

1660. Injury to Trees Along Highway.—Any person who shall wilfully injure, deface, tear, or destroy any tree or shrub planted along the margin of the highway, or purposely left there for shade or ornament, or who shall hitch any horse to any such tree, by means of which the same shall suffer injury, or who shall negligently or carelessly, by any other means, suffer any horse or other beast driven by or for him, or any beast belonging to him and lawfully in the highway, to break down, destroy, or injure any tree or shrub not his own, standing for use or ornament in any highway, shall be liable to an action for damages in a sum not less than one nor more than twenty-five dollars for each offense, to be recovered at the suit and for the benefit of the owner or tenant of the land in front of which such tree or shrub stands, or at the suit of the commissioner in whose township such tree or shrub may be situated, for the benefit of the highway improvement fund of such township. Id., Chap. X, Sec. 6. § 4463.

SHADE TREES: The policy of our laws favors the planting and preservation of shade trees in the public streets where they do not constitute actual obstruction.—Clark v. Dasso, 34 / 86. A highway commissioner who has wantonly sold trees in a highway cannot justify his action when sued in trespass by the owner by the statute authorizing him under certain circumstances to order the removal of trees from the highway.—Id. A telephone company, authorized to erect its line along a country highway, has the right to cut away obstructing branches of trees, to admit of free passage of the wires, without first giving the abutting proprietor an opportunity to do so, but it will be answerable to him for any unnecessary, improper or excessive cutting.—Wyant v. Cen. Tel. Co., 123 / 51. See Section 1665.

1661. When Commissioner to Sue for Injury to Bridge or Road.—Whoever shall injure any bridge maintained at the public charge, or any public road, by drawing logs or timber on the surface of any such road or bridge, or by any other act, shall be liable in damages to three times the amount of the injury, to be recovered in an action of trespass or on the case, by the commissioner of highways of the township within which

the injury was done, in his name of office, to be expended by him in the repair of roads in his township. Id., Chap. X, Sec. 7. § 4464.

TREBLE DAMAGES: Treble damages are punitory and ought not to be imposed in cases not clearly defined, or not involving something like wilful wrong. They are for injury to the structure and not to public travel.—Shepard v. Gates, 50 / 495; Lane v. Ruhl, 103 / 41. Giving treble damages for injuries to bridges, does not apply to cases of mere negligence, but only to those involving something of wilful misconduct.—St. Ignace Twp. Overseer v. Pelton, 129 / 31.

WHO TO PROSECUTE: See Denver v. White River Boom Co., 51 / 472; Highway Comr. v. Stockman, 5 / 528. See Section 1665.

1662. Neglect to Remove Fallen Trees.—If any trees shall fall or be fallen by any person from any occupied land into any highway, any person may give notice to the occupant of the land from which such trees shall have fallen to remove the same in two days, and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter until such tree shall be removed. Id., Chap. X, Sec. 8. § 4465.

1663. Penalty for Putting Garbage or Rubbish in Highway.—If any person or persons unless duty authorized by the highway commissioners of the township shall put any garbage, rubbish or waste material of any kind into any highway of any township of this State, with the intent to permit the same to remain there, to the injury in any way of said highway, or to the annoyance of the citizens of this State, or any of them, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a sum not less than five dollars nor more than ten dollars, together with the costs of prosecution, and in default in the payment thereof shall be imprisoned in the county jail of the county in which such conviction may be had not exceeding ten days, or both such fine and imprisonment in the discretion of the court. Id., Chap. X, Sec. 9. § 4466.

1664. Collection of Penalty When No Other Provision is Made.—In all cases in which a penalty is provided by this act for the fault, neglect or wrongful act of any person or corporation, and for the collection of which no other provision is made, the same shall be sued for in an action of trespass or on the case by the commissioner of highways of the proper township, in his official character, before any court of competent jurisdiction, and the amount when collected shall be paid to the township treasurer, and credited to the highway improvement fund of the township. Id., Chap. XIII, Sec. 8. § 4484.

Ramsby v. Bigler, 129 / 570.

1665. When Execution May Run Against the Body.—In case of any judgment rendered under and by virtue of section three of chapter seven, sections eight and nine of chapter eight, or sections four, five, six, seven, eight or nine of chapter ten, of this act, execution may run against the body as in personal actions for torts. Id., Chap. XIII, Sec. 9. § 4485.

Section three of chapter seven is section 1599 of this Guide; section eight of chapter eight is section 1620; section nine of chapter eight is section 1621; section four of chapter ten is section 1646; section five of chapter ten is section 1647; section six of chapter ten is section 1648; section seven of chapter ten is section 1649; section eight of chapter ten is section 1650; section nine of chapter ten is section 1651, and section ten of chapter ten is section 1652.

1666. Penalty on Railroad for Not Restoring, or for Obstructing Highway, Etc.—Every railroad corporation constructing its road upon, or across any stream of water, water-course, private road, street, lane, alley or highway, across any plank road, railroad or canal, which the line of its

road shall lie along or intersect, and shall fail, neglect or refuse to restore such stream, water-course, private road, street, lane, alley, highway, plank road, railroad or canal to its former condition as nearly as possible, as is provided by the fifth subdivision of section nine of article two of Act 266 of 1899 (§ 8243, C. L. of 1915), shall be liable to a penalty of not less than five nor more than twenty-five dollars for each and every day that they shall fail, neglect, or refuse to perform the things hereinbefore specified and required to be performed. All culverts or other openings in or under the road-bed of any such railroad corporation, made for the flow of water, shall be so constructed as not to interfere with the proper and thorough drainage of the land above such railroad. And any railroad corporation or company owning or operating a railroad in this State that shall permit its engines, cars, or trains to obstruct any public street or highway for a longer period than five minutes at any one time shall be liable to a penalty for each offense of twenty-five dollars. The penalties provided for each case herein shall be recovered in an action to be brought in the name of the people of the State of Michigan by the prosecuting attorney of the proper county in which the offense charged shall have been committed, upon the complaint of the proper authorities of any city, village, or township, or of any citizen injured or aggrieved by the violation by any railroad corporation or company of the provisions of this act in this section contained. § 8311.

CHAPTER XII.

SHADE TREES IN HIGHWAYS.

1667. Planting and Preservation of Trees.—Shade trees shall be planted along both sides of the public highways, at the uniform distance, as near as may be, of sixty feet apart, and not less than twenty-three nor more than twenty-five feet from the center line of the highway, but the township board of any township may direct as to the distance which trees may be set from each other or from the outer line of the highway. All trees now growing upon the sides of any highway, and all trees that may be hereafter planted thereon, standing more than sixty feet apart, shall be preserved, and shall not be injured or removed, unless by direction of the commissioner of highways, and with the consent of the owner of the adjoining land, unless such trees shall interfere with or obstruct the travel of the highway: Provided, That the provisions of this chapter in whole or in part shall not be deemed mandatory in townships in which the electors may by vote at a township meeting thus determine. Act 283 of 1909, Chap. XI, Sec. 1. § 4467.

The policy of our laws favors the planting and preservation of shade trees in the public streets, where they do not constitute actual obstruction.—Clark v. Dasso, 34 / 86; People's Ice Co. v. The "Excelsior," 44 / 229.

REMOVAL OF TREES: A street railway, authorized by the proper township authorities to lay tracks, erect trolley poles and string wires, is by implication authorized to remove obstructions, including shade trees, without compensation to the owner, when such removal is necessary for the construction of the railway as located by the township authorities.—Miller v. Railway Co., 125 / 171. The law, however, does not give the right to remove shade trees without notice to the owner, and an opportunity given him to remove them.—Id. See De Boer v. Adams, 159 / 560.

1668. Commissioner to Require Planting of Trees.—In townships where trees are not planted and growing along the highways as required by section one of this chapter the highway commissioner may cause to be

set out each year as many trees as he may deem advisable in his township where the adjoining lands are cleared, but shall not expend to exceed ten per centum of the road repair tax in any one year for such purpose. The commissioner shall particularly attend to the planting of such trees, and shall allow no unsuitable tree nor any tree lacking sufficient roots or vitality to be planted, and he shall have the charge and care of the same: Provided, however, That the cost shall not exceed twenty-five cents for each tree so set out. Id., Chap. XI, Sec. 2. § 4468.

1669. Telegraph Companies Not to Injure or Destroy Trees or Shrubs.—Telegraph companies are authorized to enter upon, and construct and maintain lines of telegraph through, along, and upon any of the public roads and highways, or across or under any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines: Provided, That said telegraph companies before the construction and erection of said lines and poles, shall first obtain the consent of the duly constituted authorities of the city, village or township through or along which said telegraph lines and poles are to be constructed and erected: Provided, further, That the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters; nor shall this act be so construed as to authorize the construction of any bridge across any of the waters of this State: Provided, further, That this act shall not be construed to authorize any such association to injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway in this State, or purposely left there for shade or ornament. Said association, instead of running or placing their wires on posts, may, if they choose, run or place the same under ground, with a suitable or proper covering for the protection of the same. Id., Chap. XI, Sec. 3. § 4469.

1670. Telephone Company Not to Injure or Destroy Trees or Shrubs.—Telephone companies shall have power to construct and maintain lines of wire or other material, for use in the transmission of telephonic messages along, over, across, or under any public places, streets and highways, and across or under any of the water in this State, with all necessary erections and fixtures therefor: Provided, That said telephone companies, before the construction and erection of said telephone lines and poles, shall first obtain the consent of the duly constituted authorities of the city, village or township through or along which said telephone lines and poles are to be constructed and erected: Provided further, That the same shall not injuriously interfere with other public uses of the said places, streets and highways, or injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway in this State, or purposely left there for shade or ornament, nor shall the same interfere with the navigation of said waters, or the running of railway trains. Id., Chap. XI, Sec. 4. § 4470.

See Mich. Tel. Co. v. Benton Harbor City, 121 / 512. A person desiring to move a building along a public street upon which telephone lines are maintained cannot do so in disregard of the rights of the telephone company, such use of streets not being an ordinary but an extraordinary one.—Kibbie Telephone Co. v. Landphere, 151 / 309. An adjoining property owner may recover for injuries to his trees that project into the highway and that may be cut or trimmed by a telephone company whose wires occupy the highway.—Boland v. Washtenaw Home Telephone Co., 161 / 315.

1671. Use of Trees in Highway.—All trees standing or lying on any

land over which any highway shall be laid out, shall be for the proper use of the owner of such land or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purposes. Id., Chap. XIII, Sec. 7. § 4483.

The owner of the land through which a highway passes is the owner of the soil and the timber, except what is necessary to make bridges, or is otherwise required to make the road passable and may maintain trespass for digging into or removing the soil, grass or timber, except when needed for the use of the highway. The public have simply the right of passage over the highway.—Williams v. M. C. R. Co., 2 / 259.

See Sections 1597, 1660, 1667, 1669 and 1670 of this Guide, and notes.

CHAPTER XIII.

TOWNSHIP ROAD BONDS.

1672.—When Town Board May Issue Bonds for Roads.—The township board of any organized township in the State of Michigan is hereby authorized and empowered, upon an application being first filed with such township board, signed by at least twenty-five freeholders of such township, to borrow a sum of money, not exceeding five per centum of the assessed valuation of such township, on the faith and credit of such township, and to issue the bonds of such township therefor, the money so borrowed to be used for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of the township board providing for the better construction, improvement and care of the highways in such township: Provided, That a majority of the legal voters of such township, voting upon said proposition, at a township meeting, a general election or a special election called by the township board for that purpose, shall vote in favor thereof. Act 283 of 1909, Chap. XIV, Sec. 8. § 4499.

As to manner of submission of question of issuing bonds, etc., see Part VII, Chapter V, being Sections 779 to 788 of this Guide.

1673. Commissioners to Supervise Work on Roads and Bridges.—The commissioner of highways shall have charge and supervision, under the direction of the township board, of such graveling, macadamizing, building of stone roads, building or repairing of bridges, or any other improvements of the highways of such township, as may be authorized under the provisions of this act, and all moneys paid out therefor shall be paid on the order of the commissioner of highways, countersigned by the township clerk. Said commissioner of highways shall render to the township board at the annual meeting thereof in each year an account in writing, showing the extent of the improvements that have been made on the highways of the township, the roads that have been constructed, or partially constructed, the number and cost of bridges built or repaired, and the amount of money that has been expended for the respective purposes: Provided, That where any township has adopted the township road system, as provided by act 149 of 1893, the road commissioners of such townships shall have charge and supervision, as provided in said act; all moneys paid out for the improvement of highways and bridges shall be paid out on the order of said township road commissioners, countersigned by the township clerk. Id., Chap. XIV, Sec. 9. § 4500.

Act 149 of 1893, above referred to, is § § 4262 to 4290, C. L. of 1897, and is superseded by Act 283 of 1909, the General Highway Law.

CHAPTER XIV.

DRAINS.

1674. Release of Right of Way.—Drains may be laid along and within the limits of or across any public highway: Provided, That when it is proposed to construct a drain in whole or in part along a public highway, the owners of the land abutting on the side of the highway along which such drain is proposed to be laid, shall be considered as still owning the fee of such land, and it shall be necessary for the county drain commissioner to obtain from them severally a release of their rights to so much of said highway as is necessary and proposed to be taken for the right of way of said drain, and for all damages on account thereof. In case such release is not executed within the time (a) prescribed in section four of chapter three, such release (b) shall be obtained in the same manner as is provided in this act for obtaining private lands. Act 283 of 1909, Chap. XV, Sec. 1. § 4510.

For similar provision which is largely superseded by this section, see § 4897, C. L. of 1915. The Sec. 4 above referred to is undoubtedly Sec. 4 of Chap 3 of the Drain Law, being § 4883, C. L. of 1915.

PURPOSE: The legislative purpose is well marked to show the distinction between the ground of authority of highway officers and drain officers in regard to ditching. The right of road officers to ditch is restricted to highway needs and to works of comparatively little extent and expense.—Conrad v. Smith, 32 / 434.

Whether a highway ditch was lawfully laid out cannot be pleaded as a defense to an action to recover the penalty for obstructing the highway.—Hines v. Darling, 99 / 49.

It has been the settled policy of this State to permit the use of highways for drainage purposes.—Kiley v. Bond, 114 / 448.

DRAINAGE OF HIGHWAYS: Highway authorities have no more right than private persons to cut drains, the necessary result of which will be to flood the lands of individuals. Absence of bad faith can never excuse a trespass, though the existence of bad faith may sometimes aggravate it.—Cubit v. O'Dett, 51 / 351; Breen v. Hyde, 130 / 6.

The legislature may authorize the laying of drains in the highways by other officers than those having the highways in charge.—Kiley v. Bond,, 114 / 448.

It has been the settled policy of this State to permit the use of highways for drainage purposes.—Kiley v. Bond, 114 / 447. After a ditch had been established more than twenty years within and along the highway in front of defendant's premises who obstructed the flow of water in the drain and prevented the highway officials from cleaning it out, the commissioner of highways need not proceed to reopen it in the manner above, but was warranted in resorting to a suit in equity.—Miller v. Harmer, 173 / 560. See Sections 1678 to 1683, inclusive, of this Guide relative to the better drainage of highways.

(a) Within twenty days after the commissioner has issued his order of determination establishing the drain.

(b) A simple form of release of right of way and damages, that shall set forth, by reference to the survey of the drain, or by other convenient description, the particular land interested to be conveyed, and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance. A release for right of way shall be deemed to include sufficient ground on either side of the center line of the ditch for the deposit of the dirt therefrom.

1675. Bridges and Culverts.—When any drain crosses a highway, the necessary bridge or culvert shall be constructed on the center line of the highway as located by survey, and in accordance with plans and specifications which shall be approved by the county, township or district highway commissioner having jurisdiction, and such bridge or culvert shall be of a permanent nature and of sufficient strength to safely carry a fifteen-ton moving load. The cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of construction of such drain, after which such bridge or culvert shall be maintained as a part of the highway. When a drain passes along a highway, there shall be constructed at least one bridge or passageway across such drain connecting the highway with each enclosed field and with each farm entrance, which bridge or passageway shall also be charged in the first instance as a part of the construction of such drain, after

which such bridge or passageway shall be maintained by the owner of the land. Id., Chap. XV, Sec. 2. § 4511.

For similar provision see § 4898, C. L. of 1915.

1676. Consent of Highway Commissioner.—Before an open drain shall be laid along a public highway, the highway commissioner of the township in which the drain is located shall be consulted and his consent as to the proposed location of the drain shall be obtained in writing, stipulating that no excavation may be made nearer than one rod to the center line of the highway and stating what disposition shall be made of all material excavated. It shall be the duty of the drain commissioner to level down all materials placed in the roadway. Id., Chap. XV, Sec. 3. § 4512, as Am. by Act 121 of 1917.

1677. Apportionment and Assessment of Benefits.—The county drain commissioner shall apportion the per centum of the cost of construction of such drain which any township traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway, and he shall also apportion the per centum of benefits to accrue to any piece or parcel of land by reason of the construction of such drain, over and above the per centum assessed against such township as aforesaid, which per centum of benefits shall be apportioned upon and assessed against the lands benefited according to such assessment of benefits and which apportionments he shall announce at the time and place of letting, as provided in chapter four. Such assessment of per centum for benefits shall thereupon be subject to review and correction, and may be appealed from in the manner hereinafter provided. Id., Chap. XV, Sec. 4. § 4513.

HISTORY: For similar provision see § 4906, C. L. of 1915.

Chap. 4 above referred to is undoubtedly Chap. 4 of the Drain Law, being § § 4902 to 4905, C. L. of 1915.

BENEFITS: In an action to recover a drain tax paid under protest, plaintiff cannot show that his land was so remote that it was not benefited by the drain.—Smith v. Carlow, 114 / 72.

The laying out of drains is a mere neighborhood matter.—Albert v. Gibson, 141 / 706.

The statute denominates these benefits assessed as taxes and declares them to be a lien on the land from the time they are assessed.—Lindsay v. Eastwood, 72 / 339.

PUBLIC HEALTH: The fact that a drain is established involves the finding of the fact that it is necessary and conducive to the public health.—Brady v. Haywood, 114 / 329; Gillett v. McLaughlin, 69 / 550.

No tax can be levied upon any portion of the public for the construction of a drain in which the public are not concerned. Even the owner of the land benefited cannot be taxed to improve it, unless public considerations are involved.—Butler v. Supervisors of Saginaw County, 26 / 29.

NOTICE TO LAND OWNER: Personal service upon a land owner is not essential to the validity of drain proceedings where notice has been given by publication in accordance with the statute.—Smith v. Carlow, 114 / 69.

As to waiver of irregularities by the land owner, see Hall v. Slaybaugh, 69 / 484; Cook v. Covert, 71 / 251.

The property of the citizen cannot be condemned or taken from him without notice of some sort either actual or constructive, of the proceedings in which it is to be done; and this is true in making and levying assessments of taxes as well as in any other proceeding.—Cook v. Covert, 71 / 253.

1678. When Highway Commissioner May Secure Right of Way.—Whenever it is necessary or more convenient for the proper drainage of any highway in this State that the surplus water be taken onto or across the land adjacent thereto, the highway commissioner of the township in which said highway is situated, may secure the right of way and may open such drain or outlet for the water, and for these purposes may use any highway moneys of the township not otherwise appropriated, and such sums as may be voted for that use by the electors of the township. The highway commissioner shall secure the right of way for any such

drain by gift or purchase from the owners of the land to be crossed by such drain; but in case of purchase the purchase price must be approved by the township board before any money be paid thereon. Such right of way shall be acquired by deed duly executed by the owner or owners of the lands sought to be crossed by the said drain, and shall be taken in the name of the township wherein the same is located, and filed in the office of the register of deeds of the county before any highway money shall be expended in opening such drain outside the highway limits. Id., Chap. XV, Sec. 5. § 4514.

FLOODING LANDS: Highway authorities have no right to cut drains the necessary result of which will be to flood the lands of individuals, even if the drain is no larger or deeper than necessary to properly construct the road.—Breen v. Hyde, 130 / 1.

1679. Commissioner to Report Expenses and Recommend Tax.—The highway commissioner shall report to the electors of the township at their annual meeting the amount of money expended by him during the year for such highway drainage, specifying the amount expended on each drain. He shall also recommend the raising of such sums as he may deem necessary for opening drains from the highway during the coming year, specifying each proposed drain and the probable amount needed for securing the right of way and opening the same. Id., Chap. XV, Sec. 6. § 4515.

1680. Special Highway Drain Fund.—The money voted for this purpose by the electors of the township shall constitute a special highway drain fund, and shall be used for no other purpose. In case any money be left in the fund, after opening the drain for which it was raised, it may be used in opening any other highway drain in the township, or in cleaning out, when necessary, those already opened. Id.

1681. Commissioner to File Report.—On the completion by the highway commissioner of any drain constructed under the provisions of this act, it shall be the duty of said highway commissioner to file in the office of the county drain commissioner a detailed report of the construction of such drain, giving the date of construction, the termini and general course thereof, together with a copy of the deed by which the right of way therefor was secured. Id., Chap. XV, Sec. 7. § 4516.

1682. Highway Commissioner's Power Extends Only to Drainage of Highways—Nothing in the provisions of the preceding sections shall be construed as giving to highway commissioners power to lay out and construct drains having any other purpose than the drainage of highways. Id.

1683. Proceedings When Right of Way Cannot be Secured.—In case the highway commissioner cannot secure the right of way across adjacent lands for the construction of any drain by agreement with the owner or owners of the land through which it will pass, he may make under his name of office an application to the drain commissioner of the county in which the proposed drain is situated, to lay out and establish the said drain. Such application shall conform to the law regulating applications for the construction of drains, and shall require no other signature than his own as highway commissioner. Such application shall have the same force and effect and be subject in other respects to the same laws and regulations that govern applications for the establishment of drains, and shall confer jurisdiction and authority on the county drain

commissioner to lay out and establish such drain under and by virtue and in pursuance of the law governing the location and establishment of other drains. Id., Chap. XV, Sec. 8. § 4517.

CHAPTER XV.

POWERS AND DUTIES OF BOARDS OF SUPERVISORS RELATING TO ROADS AND BRIDGES.

1684. Grant of Powers to Board of Supervisors.—The said several boards of supervisors shall have power, and they are hereby authorized, at any meeting thereof, lawfully held:

To borrow or raise by tax upon such county any sum of money necessary for any of the purposes mentioned in this act: Provided, That no greater sum than one thousand dollars shall be borrowed or raised by tax in any one year, for the purpose of constructing or repairing public buildings, highways, or bridges, unless authorized by a majority of the electors of such county voting therefor as hereinafter provided;

To provide for the payment of any loan made by them, by tax upon such county, which shall in all cases be within twenty years from the date of such loan;

To make such laws and regulations as they may deem necessary, and provide for enforcing the same, for the destruction of wild beasts, of thistles and other noxious weeds within the several counties;

To authorize any township or townships in their respective counties, by a vote of the electors of said township or townships, to borrow or raise by tax upon such township, any sum of money not exceeding ten thousand dollars in any township in any one year, to build or repair any roads or bridges in such township or townships, or in the use of which such township or townships may be interested, and to prescribe the time for the payment of any such loan, which shall be within twenty years, and for assessing the principal and interest thereof upon such township or townships; and if any road or bridge is situated partly in one township and partly in another, or on the line between townships, or in case any township has any particular local interest in the construction or repair of any bridge, such board of supervisors may determine, under such regulations as they may establish, the relative proportion which each township shall contribute in the building and repairing thereof, and the amount so apportioned to the several townships shall be assessed and collected in the same manner as other township taxes are now assessed and collected by law. Act 283 of 1909, Chap. XVI, Sec. 1. § 4518.

See notes under Section 223 of this Guide.

1685. Dam or Bridge Over Navigable Stream.—Every such board of supervisors shall have power, within their respective counties, to permit or prohibit the construction of any dam or bridge over or across any navigable stream. They shall also have power to provide for the removal of any obstruction arising from the erection of booms, or collecting of logs or rafts in such streams by any individual, and to direct the time in which, and places where, persons having logs, rafts, and boats in such streams shall be allowed to remain, and when the same shall be removed; and may impose such penalties as they deem neces-

sary to enforce such regulations, and authorize the sheriffs or their deputies, to carry into effect the regulations made under the provisions of this act. Id., Chap. XVI, Sec. 2. § 4519.

NAVIGABLE STREAMS: A stream which in its natural condition is capable of being used for important purposes of navigation, as the floating of vessels, boats, rafts or logs, must be regarded as a public highway.—Moore v. Sanborne, 2 / 520; Thunder Bay River Booming Co. v. Speechy, 31 / 336. And if the stream is only navigable at certain seasons of the year, during periodical high stages of the water, it is to be considered a public highway at those seasons.—Id. Stoffiet v. Estes, 104 / 208. A river so far as it is navigable for vessels or floatable for logs is but a public highway by water, and the right to navigate the one or float the other is but a right of passage, including only such rights as are incident to the use of the stream for that purpose, and necessary to render such use reasonably available.—Grand Rapids Booming Co. v. Jarvis, 30 / 309. A stream is navigable when it is inherently capable of being used for the purposes of commerce, for the floating of vessels, boats, rafts or logs.—People v. Grand Rapids, etc., Power Co., 164 / 121.

BRIDGES AND DAMS: The authority conferred by this statute upon the board of supervisors is a trust that must be executed by themselves, they cannot delegate it to others, especially to parties concerned in any details requiring the exercise of their judgment, such as the location or character of the bridge.—Maxwell v. Bay City Bridge Co., 41 / 454. Boards of supervisors have jurisdiction to act upon petitions for leave to bridge navigable streams only when the petitions answer the requirements of the two succeeding sections.—Id. As to the right to dam a private stream, see Fox v. Holcomb, 34 / 299; Valentine v. Water Power Co., 128 / 280. No one can lawfully complain of the obstruction of water courses by damming or bridging, as has been permitted in conformity to law, by the consent of the proper authorities.—Wood v. Rice, 24 / 423. The constitutional requirement that leave must be obtained from the board of supervisors before any navigable stream can be bridged does not apply to streams which, in their natural condition, are not adapted to any valuable boat or vessel navigation.—Shepard v. Gates, 50 / 495.

The authority of the boards of supervisors in bridging, etc., does not extend to streams forming any part of the state boundary; but only to those which at the place of bridging, etc., are wholly within the State.—Ryan v. Brown, 18 / 196. For an act authorizing boards of supervisors to build and maintain bridges across a navigable river, conjointly with an adjoining county of another State, see § § 4527-28, C. L. of 1915. By certain constitutional and other provisions, the right of navigation in streams was intended to be protected; and the power given by the statute to supervisors of the several counties, relating to the privilege of damming streams by private parties, is thereby limited to the intended purpose.—People v. Grand Rapids, etc., Power Co., 164 / 121.

OBSTRUCTIONS: This does not contemplate that the board shall enegage in removing obstacles to free navigation that have existed for half a century, but refers to removing obstructions concurrently created.—Gainer v. Nelson, 147 / 113.

Note.—By act of congress approved September 19, 1890, it is declared that it shall not be lawful to construct, by virtue of legislative acts of the State, any bridge not already authorized by law over navigable waters of the United States wholly within the limits of said State, without the approval of the secretary of war of the location and plans of such bridge. Under the statute, the boards of supervisors are given merely power to grant or refuse the petition of private parties, to dam navigable streams; and may not impose limitations on the right of the petitioner, except by limiting the time in which the work may be done.—People v. Grand Rapids, etc., Power Co., 164 / 121.

1686. Petition for Bridge.—Whenever any person or persons, township officers, or corporation, shall wish to construct any bridge across any stream at a point where the same is navigable for boats or vessels of fifteen tons burden or more, they shall apply to the board of supervisors by petition, and shall give notice of the same, in like manner, as near as may be, as provided in section twenty-two of act number one hundred fifty-six of the public acts of eighteen hundred fifty-three; and the powers, and the mode of proceeding of such board, shall be the same, as near as may be, as provided in the last named section. Every such petition shall set forth the kind and description of the bridge proposed to be constructed, and whether the same is to be constructed with a draw, or whether any and what provision is to be made for the passage of vessels or boats; and such board shall have the power to grant or refuse the prayer of such petition, upon such terms as they may deem just and reasonable, and to prescribe what description of bridge may be constructed, or to prohibit the construction of any bridge on the proposed location, as in their judgment the public interest shall require. Id., Chap. XVI, Sec. 3. § 4520.

The reference to Sec. 22 of Act 156 of 1853 is erroneous. Sec. 22 of Act 156 of 1851 was intended, which is § 2285, C. L. of 1915.

PETITION: A petition for leave to bridge a navigable stream must specify the proposed

location of the bridge with reasonable precision; this may depend largely upon the extent of the commercial interests that may be involved in the location and the convenience of the public; greater particularity would be needed if the bridge is to be built where there is a town than where there is not. The petition must also describe the bridge with particularity, as by indicating the location of the draws.—Maxwell v. Bay City Bridge Co., 41 / 453; Corning v. Saginaw City, 116 / 77.

RIGHT TO BRIDGE: The constitutional requirement that leave must be obtained from the board of supervisors before any navigable stream can be bridged does not apply to streams which in their natural condition are not adapted to any valuable boat or vessel navigation.—Shepard v. Gates, 50 / 495. The duty of maintaining a drawbridge over navigable waters, includes the obligation to properly provide for the safe passage of vessels through the draw.—Twp. Bd. of Ecorse v. Supervisors, 75 / 264. Where a stream, navigable at certain seasons of the year for floatage, was made navigable for a boat of fifteen tons burden by the construction of a dam by a private individual, and was so used for fifteen years, the township authorities having constructed bridges to admit of the passage of the boat, were enjoined from afterwards rebuilding the bridges in such a way as to obstruct its passage. First, for invading private rights without condemnation proceedings and compensation. Second, the stream being navigable, permission to bridge must first be obtained from board of supervisors.—Stofflet v. Estes, 104 / 208. See also Valentine v. Water Power Co., 128 / 289.

1687. Board to Prescribe Kind of Bridge.—Every such board of supervisors shall have power to make general rules and regulations as to the kind of bridges, and the mode of constructing the same over any such stream, as mentioned in section two of this chapter, when such stream shall not be navigable for boats or vessels of fifteen tons burden, or to grant permission for building the same, without the notice or hearing above provided, in such manner as shall be judged proper with reference to the passage of boats, rafts and timber. Id., Chap. XVI, Sec 4. § 4521.

1688. Bridges on State Line.—The board of supervisors of any county in this State bordering on any navigable stream which is the boundary line between such county and a county in another state, is hereby authorized, in conjunction with the board of supervisors of such adjoining county in such other state, to construct and maintain a bridge or bridges across such river at a place or places within the limits of such boundary as may be agreed upon by said respective boards of supervisors, whenever said board of supervisors in this State shall deem it necessary, and to enter into a contract with such board of supervisors of the adjoining county of such other state for the construction, maintenance and repair of such bridge or bridges. Id., Chap. XVI, Sec. 10. § 4527.

1689. Special County Tax for Bridges.—The board of supervisors of such county in this State as aforesaid, is hereby authorized to levy a special tax on all the property of such county, excepting property within the corporate limits of any city in such county, which builds and maintains its own bridges, or bond said county, exempting from any tax levy or any liability whatsoever for the payment of said bond all property within the corporate limits of any city in such county which builds and maintains its own bridges, for such part of the cost of building, maintaining and repairing said bridge or bridges as shall be allotted to said county by any arrangement between said respective boards of supervisors respecting the building, maintaining, repairing or rebuilding the said bridge or bridges: Provided, That in case such bridge or bridges shall be constructed over any navigable stream the same shall be so constructed as not to prevent or hinder the navigation of such stream by the usual crafts plying thereon: Provided further, That any such bridge built upon any stream shall be so built, constructed and maintained as not to interfere with the ordinary uses of said stream for driving logs or floating other materials or boats therein, and all such

bridges so constructed shall be constructed and maintained so as to offer and afford reasonable, adequate and proper means for the passage of boats, vessels, sawlogs, floating timber and rafts through the same. Id., Chap. XVI, Sec. 11. § 4528.

CHAPTER XVI.

TOLL ROADS.

1690. Commissioner and Supervisor May Contract for Purchase of Plank or Toll Road.—The supervisor and commissioner of any township may negotiate and contract for the purchase of such portion of any plank road or toll road as may be situated within their township, and if such contract be ratified by the electors in like manner as is provided in section four of chapter eight of this act in case of voting money for bridge purposes, they may draw their orders on the township treasurer for the amount of the contract price, and the supervisor shall levy the amount upon the taxable property of the township in the same manner as township taxes are levied. When such purchase is made and completed such road shall become a public highway, and be subject to all the provisions of law the same as other township roads. Id., Chap. XIII, Sec. 5. § 4481.

Sec. 4 of Chap. VIII, above referred to, is Sec. 1615 of this Guide.
PRIOR LAWS: Act 36 of 1891 permitting a plank road company to sell the whole or any portion of its road and franchises to any city, township, person or corporation was held unconstitutional in Grand Rapids v. Judge, 93 / 469.

1691. Supervisors and Commissioner May Grant Right to Use Highway.—Whenever any plank road company may wish to use any part of a public highway or street, for the construction of their plank road over the same, such company shall apply to the supervisor and commissioner of highways of the township, or common council of any incorporated city or the president and trustees of any incorporated village, as the case may be, in which said highway or street is situated, for the purchase or release of the same, and it shall be the duty of such supervisor and commissioner or common council of any incorporated city, or the president and trustees of any incorporated village, as the case may be, to examine, at the expense of such company, so much of any such highway or street as may be wanted as aforesaid by such company, and, if, in the opinion of a majority of such supervisor and commissioner, or common council of any incorporated city, or the president and trustees of any incorporated village, as the case may be, the public interest would not be prejudiced by granting the application of such company, said supervisor and commissioner, or a majority of them, or common council of any incorporated city, or the president and trustees of any incorporated village, as the case may be, may in writing, signed by them, grant to such company a right to enter upon, take and use such highway or street for the purpose of the construction, maintenance and use of a plank road thereon, under the provisions of the charter of such company and upon filing such grant in the office of the township clerk of such township, the said company may at once enter upon, take and use such highway or street for all the purposes aforesaid: Provided, That nothing herein contained shall prejudice any legal claim for private damages of any person on the line of such public highway or street, by

reason of the granting the said highway or street to the use of any such company: And provided further, That the amount received by said supervisor and commissioner for granting any such highway to any such company, shall be by them expended in improving the highways, or in purchasing the right of way for highways in such township. Act 283 of 1909, Chap. XVII, Sec. 1. § 4529.

1692. Appraisal of Damages.—Whenever any portion of any public highway shall be granted to the use of a plank road company, as aforesaid, any person who shall claim damages by reason of the granting of such highway to such use, as aforesaid, may have such damages appraised within the same time and in like manner as is provided by law for the appraisal of damages, on the altering and laying out of public highways: Provided, That the same notice shall be given to one of the board of directors, as is required to be given to the highway commissioner; and if any damages be awarded or appraised, the person in whose favor the same is awarded may bring an action of assumpsit for the recovery of the same against the company, and if in any such action the court shall be of the opinion that such person had any legal ground to claim damages against such company, such person shall be then entitled to a judgment for the amount of damages so awarded and legal costs of suit. Id., Chap. XVII, Sec. 2. § 4530.

1693. Construction of Plank Road.—Every plank road made shall be laid out four rods wide, and shall be so constructed as to have at least eighteen feet width of good, smooth and permanent road, nine feet of which, at least, shall be made of plank not less than three inches thick, and of such grade as not to exceed an ascent or descent on any part of said road of more than one foot in ten feet, and which roadway shall be constructed so as to permit carriages and other vehicles conveniently and easily to pass each other, and also as to permit carriages readily and easily to pass on and off where such road is intersected by other roads; and no obstruction shall be suffered unnecessarily to remain upon such plank road at any such intersection. Id., Chap. XVII, Sec. 3. § 4531.

1694. Gravel Instead of Plank.—All companies that have been or may be hereafter organized subject to the provisions of this act, instead of nine feet in width of plank road required by section three of this chapter, may construct all or any portion of said road of gravel instead of plank and may substitute gravel instead of plank where plank is now used or of stone so broken as to subserve the purposes of said gravel: Provided, That said gravel portion of said road shall in all cases be not less than nine feet in width and the gravel of which the same is constructed be not less than nine inches in depth of gravel consisting of at least sixty-five per centum of pebbles and not more than thirty-five per centum of sand loam and bonding material, and shall in all cases be of such depth and quality as to make at all times a good, firm and hard road: Provided, That said company shall be subject to all the provisions and penalties in regard to the keeping said gravel road in repair as is provided for in an act relative to plank roads, approved March 13, 1848, as amended. And also an act relative to appointment of toll road commissioners, and so forth, approved April 22, 1897.

Erin Twp. v. Plank Road Co., 115 / 465; People v. Plank Road Co., 125 / 367.

1695. Commissioner May Apply for Order of Court to Widen Plank Road.—The commissioner of highways of any township, the mayor of any incorporated city, or the president of any incorporated village, through any portion of which any plank road may be or shall have been constructed, whenever satisfied that the public good and safety, by reason of the amount of travel on such road, requires more than eighteen feet in width of good, smooth, and permanent road, or that that portion of any plank road which has been prepared and constructed for travel is of insufficient width, may, on at least fifteen days' written notice to the president or secretary of said company, apply to the circuit court of the county in which said township, city or village is located, for an order to widen said road bed. The court, on such application, and on hearing the respective parties, and on reviewing the premises, if the said court shall deem such view necessary, shall make such order in the matter as to the said court may seem just and proper: Provided, That the court shall not have power to extend the width of said road bed beyond two and one-half rods. Such order shall be observed by the respective parties, and may be enforced by attachment or otherwise, as said court shall direct, and the decision of said court shall be final in the matter, and said court may direct the payment of costs in the premises as shall be deemed just and equitable. Id., Chap. XVII, Sec. 5. § 4533.

Shadock v. Plank Road Co., 79 / 7.

1696. Electors May Allow Plank Road Company to Use Highway.—The qualified voters of any township may by a majority vote thereon, at any annual meeting, allow any plank or gravel road company to use the public highways of such township for the purpose of constructing and maintaining a plank or gravel road or roads thereon. Upon the written request of the president of such plank or gravel road company filed with the township clerk, accompanied by a fee of twenty dollars, it shall be the duty of the township clerk to give notice to the electors of the township that the question of allowing the plank or gravel road company making the request to use the highway or highways of the township designated in such written request, shall be submitted to a vote of the qualified electors of such township at the annual township meeting. Said notice shall contain a full and complete description by the metes and bounds of the highway in question, shall state the time of the annual meeting, and shall be posted in five or more conspicuous public places in the township for at least twenty days prior to the annual meeting. The request required by this section to be filed with the township clerk shall be signed by twenty or more freeholders of the township, shall contain a description in full of the highway so desired to be used, and shall be filed with the township clerk at least forty days preceding the annual township meeting in any year. The vote in any township upon the question of allowing any plank or gravel road company to use any of the highways of such township for the purposes aforesaid shall be by ballot. The ballot shall contain the words, "Shall the right of way be granted? Yes [ ]," and "Shall the right of way be granted? No [ ]." Such ballots shall be printed and furnished by the township board. The voter shall designate his choice by making a cross in the square preceding the words "Yes" and "No;" and the ballots shall be received by the board of election inspectors, deposited in a separate ballot box, canvassed

and the results declared in the same manner as is provided by statute in the case of the election of township officers: Provided, That the right to construct such plank or gravel road shall not be deemed to have been granted unless the affirmative vote shall be equal to a majority of all the votes cast at such annual township meeting. Where the right of way is not granted, the same proposition shall not be again submitted within two years. Id., Chap. XVII, Sec. 6. § 4534.

1697. Liability of Plank Road Company for Damages.—Any such corporation shall be liable for all damages that may be sustained by any person or persons, to themselves or property, in consequence of neglect or omission to keep such road in reasonable repair and in condition reasonably safe and fit for public travel. Id., Chap. XVII, Sec. 7. § 4535.

1698. Company to Keep Road in Good Condition.—In all cases where any plank road company has or may at any time hereafter, become authorized or permitted to enter upon, take or use any public highway or street, on the route of its plank road, and to construct its plank road thereon, or to use and maintain the same for a plank road, and to actually take possession of said road or street, by laying down sections or portions of plank, and delivering plank upon such road or street, such company shall, at all times, so far as the formation of the soil and season of the year will permit, keep in good order and condition so much of said road as it shall not have planked, until it shall have planked the same; and if any company shall neglect to keep such highway or street in such order and condition, it shall be deemed to have abandoned and forfeited the right to enter upon, take or use such public highway or street, as to so much as shall not be planked. Id., Chap. XVII, Sec. 8. § 4536.

FORFEITURE OF FRANCHISE: Forfeiture of franchise by plank road company after six years' negligence.—Coon v. Plymouth Plank Road Co., 32 / 249. Upon the forfeiture of its charter and the abandonment of a plank road by the company maintaining it the land becomes a public highway and does not revert to the abutting owner.—Highway Commissioners v. Cobb, 104 / 395.

LIABILITY: The fact that a bridge constituting a part of a plank road company's road is destroyed without its negligence does not relieve it from the duty to rebuild.—People v. Plainfield Gravel Road Co., 105 / 9. A plank road company extending its roads by amendment of its charter is under the same liability to keep the part added by the amendment in repair as that originally included.—Wolcott v. Gravel Road Co.—Id. The defendant in accepting its franchise assumed the duty of keeping its way in repair, and its charter, when made was subject to all future reasonable and proper police regulations enacted for the protection of the lives and health of the people and the prevention of injury thereto.—Carver v. Plank Road Co., 69 / 616.

1699. Manner of Planking or Graveling.—Every plank road company and the owners of any such plank road company, by purchase or otherwise, shall cause to be laid down and kept closely together and in an even manner so that the surface shall be uniform, the plank upon its road; or, if said company or the owners shall have built any portion of their road or may build any portion of the same of gravel or stone so broken as to serve the purpose of gravel, they shall cause the said gravel or broken stone of the proper quality and quantity to be placed upon the road and kept in a uniform manner, of the width and depth required by law; and, in case of default, they shall forfeit the right to receive any toll upon said road. And the prosecuting attorney of the county, on complaint of the highway commissioner of any township in which any portion of the road defectively constructed or out of repair lies, may institute a suit in the circuit court for the same county, in chancery, to have such default judicially ascertained and declared; but, if such prosecuting attorney is interested in said suit or in said plank road

company, or shall refuse or neglect to commence said suit, then the highway commissioner of such township, by consent of the township board of such township, may employ an attorney, at the expense of such township, to commence said suit, and the same may be prosecuted in the same manner as if it had been commenced by said prosecuting attorney. The said circuit court, in chancery, for the respective counties, shall have full jurisdiction of all cases arising under this act to hear, try and determine the same upon bill or petition filed according to the usual course and practice of these courts, and may grant injunctions in all such cases restraining the company or the persons owning or operating said road from collecting toll from persons who travel over the same, and may fully determine said cause. Id., Chap. XVII, Sec. 9. § 4537.

REPAIR OF ROAD: Under this section a company cannot abandon a bridge constituting a part of its road and thereby escape liability to keep the same in repair.—People v. Plainfield Gravel Road Co., 105 / 9. Proceedings to enjoin road from taking toll for neglect to keep road in repair.—People v. Plank Road Co., 67 / 5. Where the stockholders of a turnpike company by resolution abandon a portion of its road which is out of order, an action will immediately lie to forfeit its charter for failure to keep the same in repair.—People v. Plainfield Gravel Road Co., 105 / 9.

1700. Condemnation of Rights of Toll and Plank Road Company.—The board of supervisors are authorized to institute proceedings for the condemnation of all the rights of toll and plank road companies. See Act 283 of 1909, Chap. XVII, Secs. 10-19, being § § 4538 to 4547, inclusive, C. L. of 1915.

1701. Township May Purchase Toll Road.—Any township in which any toll road company has the right to maintain gates or collect toll on any street, avenue or highway within said township, may purchase all or any part of the rights, roads, property, privileges or franchises of said company in such street or highway at a valuation to be agreed upon between the township board of such township and the board of directors of such toll road company. Act 283 of 1909, Chap. XVII, Sec. 20. § 4548.

1702. Condemnation Proceedings by Township.—In case no agreement can be reached for such purchase as aforesaid, such township is authorized to condemn such rights; in which condemnation such township shall proceed as in the condemnation of lands for streets according to the provisions of act 124 of 1883, and the acts amendatory thereof, so far as the same are applicable, but the damages to which such companies may be entitled shall be paid wholly by such city, village or township. Id., Chap. XVII, Sec. 21. § 4549.

Act 124 of 1883, above referred to, is Chap. 75, C. L. of 1915, being § § 3376 to 3400, inclusive.

1703. Company May Sell Road.—Any toll or plank road company organized under the laws of this State, is hereby authorized to sell such portion or portions of its rights, road, property, privileges and franchises as lie within any township, to township on such terms as may be mutually agreed upon, and the sale or condemnation of any portion of such road and franchise as lies within any township to or by such township shall not deprive any such toll or plank road company from receiving and collecting toll on such length of road as it may have remaining after such sale or condemnation, at the rate of toll per mile as now fixed by law. Id., Chap. XVII, Sec. 22. § 4550.

1704. Assessment for Purchase Price.—When any township shall have acquired any rights, roads, property, privileges or franchises of any

toll or plank road company, as aforesaid, by purchase or condemnation as hereinbefore provided (whether such rights, roads, property, privileges or franchises have been acquired by such township prior to this act, or shall hereafter be acquired by such township), the township board of such township shall raise by special assessment upon all the real and personal property within such township, such amount of money as may have been agreed upon between such toll or plank road company and such township for the sale and purchase of any such rights, roads, property, privileges or franchises or portions thereof, of any toll or plank road company as aforesaid, or in the event of condemnation proceedings as herein provided, such sum of money as shall have been awarded to such toll or plank road company in such condemnation proceedings. Moneys raised by such special assessments shall be held as a special fund to pay such cost and expense of such purchase or condemnation. Such special assessments shall be assessed, levied and collected at the time and in the manner provided for the assessing, levying and collecting of the general fund or general taxes of such township. Id., Chap. XVII, Sec. 23. § 4551.

1705. Highway Commissioner to be Toll Road Commissioner.—After the passage of this act it shall be the duty of the commissioner of highways of any township through which any toll road may enter or pass, to act as toll road commissioner, and he shall require all toll road companies in any such township in this State to construct, reconstruct, repair and maintain their roads in good repair, and of the same material and in the same manner as required by their charters, within six months after the passage of this act. All toll road companies who fail or neglect to comply with the provisions of this act shall be considered to have abandoned their road, and they shall cease thereafter to take toll, and no person traveling over such toll road shall be required to pay toll thereafter. Id., Chap. XVII, Sec. 24. § 4552.

1706. Penalty for Neglect to Repair Toll Road.—All toll road companies who comply with the provisions of this act, within the time prescribed in section twenty-four of this chapter shall be required by said township toll road commissioner to maintain all such toll roads as herein required, and in default thereof, after being notified by said toll road commissioner to repair such roads as herein provided, for any three consecutive months, then said toll roads shall be considered abandoned, and all such toll roads shall have no further right to collect toll, and shall cease to take toll thereafter, and no person shall be required to pay toll for traveling thereon after such abandonment as herein provided. Id., Chap. XVII, Sec. 25. § 4553.

CONSTITUTIONALITY: Same language in Act 91 of 1897 held unconstitutional in Gravel Road Co. v. Hogadone, 150 / 630, and in Besson v. Crapo Toll Road Co., 150 / 655.

1707. Duties of Township Toll Road Commissioner.—Said township toll road commissioner shall examine all toll roads in his township when he shall have reason to believe they may not be properly kept in condition as provided in their charters. Also, when required so to do by any taxpayer in any township into or through which any toll road may run, who shall make affidavit that he believes any such toll road company is violating any of the terms or conditions of its charter, or is not keeping its road in good condition, and present such affidavit to such toll road

commissioner, and in case he shall find such road or any portion thereof not kept up to the requirements provided herein, he shall immediately notify such toll road company of such defects as he may find, and he shall require them to repair and put into such condition as herein required within sixty days. And in default thereof, the commissioner shall immediately make a certificate of such fact and file the same with the township clerk of his township, and such toll road shall be considered abandoned, and all such toll road companies shall cease to take toll for traveling thereon after such abandonment, and no person shall be required to pay toll for traveling thereon after such abandonment. After said certificate has been so filed, said toll road commissioner shall notify any such toll road company in writing of the filing of such certificate, and said company shall have no right thereafter to obstruct said road or prevent persons from passing over the same, or any part thereof, and it shall be the duty of said toll road commissioner to prevent such obstructions, or to remove them if placed in said roads, as provided in any other of the highways of his township. Whenever any toll road commissioner, after a full and complete investigation, and hearing of the evidence offered by parties concerned, shall determine that the said toll road in question is not maintained in accordance with the conditions and provisions of its charter, said toll road, or toll road companies, may within twenty days after such finding, appeal, as in other cases provided, from the decision of said commissioner to the circuit court in chancery of the same county. But the orders of said commissioner shall be and remain in full force until revoked by the order of the said court. Id., Chap. XVII, Sec. 26. § 4554.

1708. **Penalty on Commissioner for Refusal or Neglect to Perform Duty.**—Any township highway commissioner, coming under the provisions of this act, who shall refuse, fail or neglect to perform his duties as herein provided, shall be guilty of a misdemeanor, and upon prosecution and conviction, shall be fined not to exceed one hundred dollars, or imprisonment in the county jail not to exceed ninety days, or both, in the discretion of the court. Id., Chap. XVII, Sec. 27. § 4555.

CHAPTER XVII.

CULVERTS, OR CATTLE-PASSES AND HEDGES.

1709. **Cattle-Passes Under Highways.**—It shall be lawful for all persons owning land on opposite sides of any public highway to construct culverts or cattle-passes under such highways: Provided, That formal application is made to, and permission obtained from the commissioner of highways of the township in which said land is situated, for such construction: Provided further, That such construction and maintenance shall be wholly at the expense of such applicant, his heirs and assigns. Act 283 of 1909, Chap. XIX, Sec. 1. § 4560.

1710. **Highway Commissioner Shall Direct Construction.**—Such culverts or cattle-passes, when constructed, shall be of such material and according to such plan as the commissioner of highways shall direct. Id., Chap. XIX, Sec. 2. § 4561.

1711. **When Commissioner May Remove Cattle-Pass.**—In case any such applicant, heirs or assigns shall fail to keep his culvert or cattle-

pass already constructed, or hereafter to be constructed, in good repair, it shall be the duty of such highway commissioner to remove such culvert or cattle-pass from such highway at the expense of such applicant, or owner, heirs or assigns, such expense to be collected by suit in the name of such commissioner of highways in an action of trespass on the case before any justice of the peace of such township. Id., Chap. XIX, Sec. 3. § 4562.

1712. Record of Proceedings.—A record of such culverts or cattle-passes, and of all proceedings relating thereto, shall be kept in the manner substantially as is provided for the record of private roads.

As to private roads see Chap. X of Part XV, being Sections 1642 to 1654 of this Guide.

1713. Care of Hedges.—It shall be the duty of every owner, occupant or person having charge of lands in this State, to cut or trim, or cause to be cut or trimmed, to a height not exceeding four and one-half feet and a width not exceeding three feet, all hedges or hedge rows along or on the public highway or adjacent thereto in each and every year, except such hedges as shall have been set out for the protection of fruit trees and nursery stock. Trimmings or brush from such hedge rows shall not be left lying within the limits of the highway, but shall be forthwith removed. Id., Chap. XIX, Sec. 5. § 4564.

Any owner, occupant or person having charge of lands who shall fail to comply with the provisions of this act, on conviction before a court of competent jurisdiction, shall be punished by a fine not more than ten dollars, together with the cost of prosecution, and in default of payment of the same shall be imprisoned in the county jail of the county where the land is situated, for a period not exceeding twenty days. Id., Sec. 6. § 4565.

CHAPTER XVIII.

STATE AND TERRITORIAL ROADS.

1714. Highway Commissioner to Have Care of State Roads.—All state roads which are now or may hereafter be laid out in this State shall be under the care of the commissioners of highways of the several townships through which the same shall pass, and subject to be by them opened and kept in repair in the same manner as township roads, but such state roads shall be altered or discontinued only by the boards of supervisors of the counties in which they may be situated. Id., Chap. I, Sec. 26. § 4313.

For state roads within corporate limits of city or village see Section 1723 of this Guide.

STATE ROADS: State roads are laid out, altered or discontinued by order of board of supervisors. See Section 236 and notes. And highway commissioners cannot usurp this privilege.—Goldsmith v. Highway Commissioners, 15 / 347. But this fact does not interfere with or diminish the duty of a township to keep such roads and the bridges upon them in good repair.—Delta Lumber Co. v. Board of Supervisors, 71 / 572. And failure to do so creates a liability the same as for neglect of roads laid out by highway commissioners.—Id. By the settled policy of this state the care and supervision of all highways and bridges is in the hands of the highway commissioners of the several townships respectively, in which they are situated.—Delta Lumber Co. v. Board of Supervisors, 71 / 572; Pen. Savings Bank v. Ward, 118 / 91. And application for mandamus to compel the board of supervisors to repair state road bridges was dismissed.—Id. State roads are only such as have been laid out by legislative authority.—Davies v. Supervisors, 89 / 295. The legislature has control over state and territorial roads, and may authorize the construction of street railways over them.—Smith v. Jackson, etc., Traction Co., 137 / 20. The highway commissioner has nothing whatever to do with the granting of franchises of street railways; his sole power is to see that the roads are opened and kept in repair in the same manner as township roads.—Id., 26.

1715. Power of Board of Supervisors Over State and Territorial Roads.—The boards of supervisors of the several counties within this State, are hereby authorized and empowered to cause to be laid out, established, altered, discontinued or opened, all state and territorial roads heretofore or now laid out, or hereafter to be laid through, or within their respective counties, whenever they may deem it for the interest of the public. Id., Chap. XVI, Sec. 5. § 4522.

POWER OF SUPERVISORS: See Delta Lumber Co. v. Board of Auditors, 71 / 572; People v. Kimball, 4 / 95; People v. Nankin, 15 / 347; Att'y Gen. v. Supervisors, 34 / 46; Pen. Sav. Bank v. Ward, 118 / 87. State roads are only such as have been laid out by legislative authority.—Davies v. Supervisors, 89 / 295. The record of the board must show that the interest of the public was considered in discontinuing a road.—Pearsall v. Supervisors, 71 / 438; 74 / 558. And must show that the board acted within the limits of the power conferred.—Id. An occupant of land traversed by a highway with reference to which his houses, wells, barns and orchards have been located must have notice of its proposed discontinuance by the board of supervisors.—Curry v. Place, 99 / 525.

1716. Highway Commissioner to Survey Road.—Whenever the board of supervisors of any county are petitioned to by at least twelve freeholders of each of the townships through which any such road or roads may pass, they shall, upon such petition, authorize the commissioners of highways of such townships to cause the line of said road or roads, within their respective townships, to be surveyed and located therein, and such commissioners shall report such survey and location to the board of supervisors of their county; and upon examination of said survey and report, said board may declare such road or roads duly laid out, established, discontinued, opened, or altered, as the case may be. Id., Chap. XVI, Sec. 6. § 4523.

The petition must show of what townships the petitioners are freeholders and residents; and that a sufficient number from each township signed.—Pearsall v. Supervisors, 71 / 438; 74 / 558. This section was not intended to confer any power or impose any restriction on the action of the board, but simply to impose the duty of acting when any petition therein mentioned should be presented.—People v. Supervisors, 20 / 95. Where the right of eminent domain is exercised by any other authority than highway commissioners in laying out or discontinuing highways, the constitutional requirement of a jury is retained.—Pearsall v. Supervisors, 71 / 439; 74 / 558. That the legislature may constitutionally alter or vacate a state road and delegate the power to the boards of supervisors, see Bristol v. Supervisors, 20 / 95; Pearsall v. Supervisors, 71 / 438; Davies v. Supervisors, 89 / 296.

1717. Highway Commissioner to Furnish Minutes of Surveys to Town Clerk.—Whenever said road or roads shall be surveyed, laid out, altered or established under the provisions of this chapter, it shall be the duty of the board of supervisors to whom such petition and report may have been made as aforesaid, to notify and require the commissioners of highways of the several townships through which said road or roads may pass, to furnish to the several township clerks of such townships, the minutes of all surveys within their respective townships, and the same shall be recorded by said clerks in the same manner that township roads are recorded. Id., Chap. XVI, Sec. 7. § 4524.

1718. Damages Assessed by Jury.—Any person feeling himself aggrieved by the action of the board of supervisors by the laying out, altering or discontinuing any road designated by this act, may have his damages assessed by a jury composed of twelve freeholders residing in the township where the land through which said road has been laid out, altered or discontinued, is situated. Such person so complaining as against the action of such board, may, within thirty days after receiving notice in writing from the clerk of such board of supervisors of any county that any road has been laid out, altered or discontinued across

lands owned by him, go before any justice of the peace in said township where such land is located and file with such justice a petition setting forth the fact of the laying out, altering or discontinuing of such road running through the lands owned by him, whereby he has been, or is likely to be damaged, and further praying the court that a venire be issued summoning a jury of twelve freeholders of said township to determine the necessity of laying out, altering or discontinuing said highway, and the taking of private property therefor, and the amount of such damage he has sustained, or is likely to sustain from the action of such board as aforesaid. On the receipt of such petition the said justice shall at once give notice to the petitioner in writing of the date when said petition will be heard before him, and shall also notify in writing the supervisor of said township of the time and place when the same will be heard, which shall not be less than six days from the date of the petition, nor more than twelve. And on the date and at the hour mentioned in said notice the justice shall direct any constable of said township then present to write the names of twenty-four freeholders from which to select a jury of twelve persons. On the compliance with such order by the constable, the supervisor, if he be present, and if not present, then the justice aforesaid, together with the person filing such petition, shall proceed to strike, each alternately, from such list, the names of six persons, and the remaining twelve names on said list shall constitute a jury for the purpose aforesaid. But in case any of such jurors on the original list shall be unable to sit, then the court shall direct the officer present to summon talesmen to take their places until such panel is full. When such panel is completed, the justice shall swear said jurors to well and truly determine as to the matters set forth in the petition of the person making the same. Said justice shall have full power to issue subpoenas and to compel the attendance of witnesses, the same as he would have in matters triable before him; and all proceedings on the hearing of said petition shall be conducted as nearly as may be as are trials before justices of the peace. If the jury, on hearing all of the evidence both for and against the allowance of damages, and the necessity for the taking of said lands for private purposes, shall determine that the person claiming to be aggrieved, is entitled to damages, then they shall determine as to the amount, and the necessity for the taking of said lands, and under their hands certify to the justice such sum, and the necessity aforesaid, and, in case they determine that such person is not so entitled, they shall certify this fact to said justice, who shall, upon the rendition of such verdict, file the same, and within ten days from the date of its rendition, transmit the same to the clerk of said county, and shall also serve a copy of the verdict and notice of all proceedings, in relation to said application upon all persons whose lands are affected by said application, which notice shall be full and explicit as to any and all proceedings had therein, and shall at the next regular meeting of the board of supervisors of his county, present the same to such board and cause it to be entered upon the minutes of such board. In case damages have been awarded, as aforesaid, then such board of supervisors shall apportion the amount to the several townships in said county, and the same, when so raised, shall go into and become a part of the general fund of such county, and they shall, at the same time, issue an order to the person or his representatives or assigns, as the case may

be, for such sum on the county treasurer, and payable out of any fund in the county treasury not otherwise appropriated: Provided, That the person thus claiming damage shall file with such justice at the time he files his petition, a bond in the penal sum of fifty dollars conditioned to pay all costs of such justice, officer and jury; but in case damages are awarded, then the costs of such proceedings shall be certified by said justice along with the award and become a part and parcel thereof, and payable to said petitioner in addition to the award of the jury: Provided further, That in case the jury first summoned shall not agree, then the said cause or hearing shall stand adjourned to some day fixed by said justice, but not for a longer period than ten days; and on the day to which the same shall be continued a jury shall be empaneled and the matter submitted as hereinbefore directed. Id., Chap. XVI, Sec. 8. § 4525.

Right of jury.—Pearsall v. Supervisors, 71 / 439.
Appraising of damages.—People v. Supervisors, 20 / 102; Pearsall v. Supervisors, 74 / 559.

1719. Record of Orders, Etc.—Every order, resolution and determination of such board of supervisors, made in pursuance of this act, shall be recorded in the records of such board, and signed by the chairman and clerk of such board. Id., Chap. XVI, Sec. 9. § 4526.

RECORDED AND SIGNED: This section is mandatory and was enacted for the protection of both public interests and private rights.—Pearsall v. Supervisors, 71 / 438. The above section includes all the proceedings required by law to be entered upon the records of the board.—Weston v. Monroe, 84 / 341. The failure of the chairman of the board to sign the record of the proceedings of the board in equalizing the assessments and apportioning the state tax is fatal to the validity of a tax deed based thereon.—Weston v. Monroe, 84 / 341. The record of the board of supervisors may not be collaterally attacked because of the failure of the clerk to sign the record before the final adjournment, where the record had been signed by the clerk during his term of office, and had been read and approved at a subsequent meeting, the record of which was properly authenticated.—Derosia v. Lee, 158 / 64.

1720. Survey of State Roads and Ditches.—In surveying and locating state roads and ditches hereafter to be surveyed and located, it shall be the duty of the local commissioner, or other person or persons having charge of the same, to cause the survey to be made on the center line of the road or ditch to be located, and as follows, and the field notes of such survey shall be made to show: The precise location of the beginning, terminus, and intersections, with section lines, by course and distance, to the nearest convenient monument of the United States survey; mile posts shall be set at the close of each eighty chains, and the miles so marked off shall be numbered consecutively from the beginning; the distances shall be accurately measured, each eighty chains by itself, from mile post to mile post, and the character of the country shall be carefully noted as passed, so as to show the timber, soil, surface, and topography in detail along the line; all angles in the line shall be established with proper monuments and witnesses thereto, the course of the line from angle to angle shall be accurately given in degrees and minutes, and the particular magnetic variation employed shall be given; in all cases where any bridge may be required on line of road, the field notes of the survey shall be made to show width of stream, height, character of banks, and maximum height of water at flood, all measured with reference to the height of water at its ordinary state; and the length of bridge required shall be separately stated; in all cases of surveys for ditches, in addition to the mile and angle posts hereinbefore required, there shall be section

stakes set and the level actually taken at the end of each two chains of the line. Act 283 of 1909, Chap. XX, Sec. 1. § 4566.

1721. Record of Surveys.—It shall be the duty of the local commissioner or other person or persons having charge of the location and survey of any state road or ditch, which has not been previously recorded, to cause a full and complete record of every such survey to be made immediately, and filed in the office of the state swamp land commissioner at Lansing. Such record shall be made upon blanks which said state swamp land commissioner is hereby required to furnish, and shall consist of a full copy of the field notes of the survey made, upon the right hand page, and a full delineation of the same platted upon the opposite page. The record of survey of any state ditch shall further include a separate delineation thereof in profile drawn to a scale of eight chains per inch horizontal, and four feet per inch vertical. Said profile shall show the proposed grade line of the bottom of the ditch, the depth thereof in figures at each two chains of length, and the width on bottom and slope of sides proposed for such ditch. The surveyor shall endorse upon such record his certificate of the actual performance of the survey and of the date thereof. The local commissioner or other person or persons having charge of the location or construction of such state road or ditch, shall endorse upon such record his certificate that the survey was made under his direction and for the purpose set forth. Id., Chap. XX, Sec. 2. § 4567.

After the survey of any state road or ditch shall have been approved by the board of control of state swamp lands, the state swamp land commissioner shall cause a full and complete transcript of the record of such survey to be made and filed in the office of the register of deeds of the county or counties in which the same is located. And said register or registers with whom any such transcript may be filed shall carefully preserve all files in proper order in his said office and deliver the same to his successor in office. Id., Sec. 2. § 4568.

1722. Audit and Payment of Expenses.—All necessary expenses for making surveys, field notes, and diagrams of such state roads or ditches required by this act, shall be paid by the several counties, respectively, in that proportion in which they were incurred for making such surveys, field notes and diagrams of the territory in their respective counties, and it is hereby made the duty of the several boards of supervisors of any of the counties of this State, through which any state road or ditch may be located, to audit and pay their respective share of all necessary expenses of the surveys, field notes and diagrams provided for in this act. Id., Chap. XX, Sec. 4. § 4569.

1723. Supervision of Certain State Roads in Villages.—All state roads which now are or hereafter may be within the corporate limits of any city or village within this State, shall be under the supervision of the common council or board of trustees of such city or village, with power to control, vacate or alter such roads within their corporate limits. Id., Chap. XX, Sec. 5. § 4570.

CHAPTER XIX.

SIDEWALKS.

1724. Highway Commissioner to Have Care of Sidewalks in Unincorporated Villages.—In all unincorporated villages, commissioners of highways are hereby authorized to lay out and expend such portion of the township highway funds in their hands or under their control as they shall deem, subject to the limitations of section seven of this chapter for that purpose for the construction, care and maintenance of suitable sidewalks and cross-walks in such villages. Act 283 of 1909, Chap. XXI, Sec. 1. § 4571.

CROSS-WALKS: Cross-walks are parts of the traveled way and the township is liable in case they are suffered to become unsafe to public travel.—Frary v. Allen Twp., 91 / 667.

SIDEWALKS: Where a township has authorized expenditures and has expended public funds for the repair of sidewalks built by abutting owners in an unincorporated village in the township, which sidewalks are almost an essential to the use of the highways along which they are built, the township is liable for injuries to a traveler caused by defects in one of such walks, though the sidewalk has never been established by the township authorities.—Welton v. Crystal Twp., 152 / 486. The adoption of the county road system does not make the county liable for defects in sidewalks situated in an unincorporated village.—Ferguson v. County of Muskegon, 181 / 335.

1725. Authority of Township.—Public sidewalks may be established, opened, improved, and maintained within the boundaries, and along the highways, within this State under the provisions of this act; and the townships and unincorporated villages of this State shall possess the authority herein prescribed, for the building, repairing, and preserving the same. Id., Chap. XXI, Sec. 2. § 4572.

There is no law which requires a landowner to build or keep up walks, broad or narrow, along every highway, whatever may be the case where city authorities, under a city charter have been allowed to require it on their streets.—Fletcher v. Scotten, 74 / 212.

1726. Commissioner to Lay Out, Alter, Etc.—Public sidewalks shall not be less than four feet in width when constructed of earth, and may be laid out, altered, or discontinued, by the commissioner of highways of any township, upon the written application of a majority of the taxpayers abutting such walk. Id., Chap. XXI, Sec. 3. § 4573.

1727. Applications for Sidewalks.—In applications for laying out or altering a sidewalk, the highway along which the walk is to be laid, or the extent to which it is proposed to be changed, shall be described in general terms, and when the application is for the altering or discontinuance of a sidewalk, such walk may be described by any means by which it is known; but if discontinuance of only a portion of the walk is asked for, such portion shall be specified. Id., Chap. XXI, Sec. 4. § 4574.

1728. Commissioner to Post Notice of Application.—In case of an application the commissioner shall, within five days after receiving the same, issue a written notice stating the object of such application, and appoint a time and place of hearing, which notice shall be served by posting up the same in three public places in each highway district, along the line of the proposed sidewalk, ten days before the time of hearing. Id., Chap. XXI, Sec. 5. § 4575.

1729. Commissioner to Determine Necessity for Sidewalk.—The commissioner shall, at the time appointed, proceed to examine the route prescribed, and to ascertain and determine the necessity for laying out, altering or discontinuing a sidewalk pursuant to such application; and

within five days after a final determination upon any application, he shall file a full record and return of his doings in the premises, with the township clerk. Id., Chap. XXI, Sec. 6. § 4576.

1730. Commissioner to Build or Repair Sidewalk.—If the highway commissioner shall decide that the building or altering of the sidewalk applied for is necessary and advisable he shall proceed to build or rebuild such walk or cause the same to be built or rebuilt and he shall have the general care and superintendence of such sidewalks, and for the purpose of building and repairing the same may use not to exceed one hundred dollars per year from the road repair fund of his township: Provided, That one-half the expense of building, rebuilding or repairing such sidewalks shall be paid by the owner of the property abutting such walk and, provided such abutting property owner shall neglect or refuse to pay his share of the building, rebuilding or repairing of such walk, the same shall be assessed against the property to be collected with the next general tax against such property. Id., Chap. XXI, Sec. 7. § 4577.

1731. Penalty for Riding or Driving on Sidewalk.—Whoever shall ride or drive upon any sidewalk laid out according to the provisions of this act, except for the purpose of crossing the same, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five dollars and the costs of prosecution, or by imprisonment in the county jail of the county not exceeding ten days, or by both such fine and imprisonment, in the discretion of the court. Id., Chap. XXI, Sec. 8. § 4578.

1732. Unlawful to Drive Cattle on Walks.—It shall be unlawful for any person, wilfully, to drive any cattle, horses, sheep, swine or other animals, or to ride or drive any vehicle other than bicycles or tricycles, upon and along the sidepaths and sidewalks, whether constructed by private persons or public authority for the use of pedestrians and bicyclists, in the public highways and roads of this State, outside of incorporated cities and villages: Provided, That such paths and sidewalks to be protected by the provisions of this act shall be on only one side of any roadway and in some manner separated and distinguished from the main traveled part of the highway: Provided further, That the location of such path or paths shall first have been determined by the commissioner of highways or the county road commissioner, such determination to be filed in the office of the township clerk or the clerk of the county, as the case may be: Provided further, That persons feeling themselves aggrieved at the decision of said highway commissioner shall have the right to appeal from his decision to the township board in the same manner as now provided by law in laying out and constructing highways. Id., Chap. XXI, Sec. 9. § 4579.

1733. Unlawful to Injure or Destroy Sidewalks.—It shall be unlawful for any person, wilfully to injure or destroy, or render impassable or dangerous for pedestrians or persons riding bicycles, any side-path or walk as described in section nine of this chapter. Id., Chap. XXI, Sec. 10. § 4580.

1734. Penalty for Placing Glass, Etc., on Sidewalks.—It shall be unlawful for any person wilfully to place upon the surface of any such public street or highway in this State, or upon any sidewalk or path

appurtenant thereto, any glass, metal, stones, earthenware or other substance of a nature likely to cause injury to travelers, pedestrians, carriages, bicycles or other vehicles used on said road, or which are of a nature likely to wound, disable or injure any horse or other animal, or to cut, injure or puncture any pneumatic tire: Provided, Nothing contained in this section shall be so construed to prohibit the public authorities from using any usual or proper means in the improvement of roads and highways. Id., Chap. XXI, Sec. 11. § 4581.

1735. Regulations as to Construction.—Whenever any such side-path or walk is constructed less than twelve feet from the center of the highway, it shall be considered as part of such highway. No side-path or walk within the meaning of this act shall exceed five feet in width. Nothing in this act shall be construed to prevent any person from driving across said paths or walks for the purpose of entering private property. Id., Chap. XXI, Sec. 12. § 4582.

1736. Misdemeanors.—Any person found guilty of a violation of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than one dollar, nor more than ten dollars for each offense, together with costs of prosecution, or imprisonment in the county jail not exceeding ten days, or by both such fine and imprisonment in the discretion of the court; and shall further be liable in an action to any person who shall suffer injury to his person or property by reason of such violation of the provisions of this act. Id., Chap. XXI, Sec. 13. § 4583.

1737. Use of Bicycles, Etc., on Sidewalks Prohibited.—It shall be unlawful for any person or persons to operate or ride a bicycle, motor cycle or other motor driven vehicle upon that part of the street or highway where sidewalks have been regularly laid out and constructed for the use of pedestrians, not including crosswalks, in any unincorporated village, or plat or plats, not in any incorporated village or city. Any person or persons who shall violate the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or be confined to the county jail for a period not exceeding thirty days or both in the discretion of the court. Act 38 of 1917.

CHAPTER XX.

RECOVERY OF DAMAGES.

1738. Damages for Bodily Injuries.—Any person or persons sustaining bodily injury upon any of the public highways or streets in this State, by reason of neglect to keep such public highways or streets, and all bridges, sidewalks, cross-walks and culverts on the same in reasonable repair, and in condition reasonably safe and fit for travel by the township, village, city or corporation whose corporate authority extends over such public highway, street, bridge, sidewalk, cross-walk or culvert, and whose duty it is to keep the same in reasonable repair, such township, village, city or corporation shall be liable to and shall pay to the person or persons so injured or disabled just damages, to be recovered in an action of trespass on the case before any court of competent jurisdiction. Act 283 of 1909, Chap. XXII, Sec. 1. § 4584.

LIABILITY UNDER ACT: For decisions illustrative of municipal liability, see Dundas v.

Lansing, 75 / 499; Malloy v. Walker Twp., 77 / 460; Tice v. Bay City, 78 / 209; 84 / 461; Sebert v. Alpena, 78 / 165; McKeller v. Monitor Twp., 78 / 485; Blank v. Livonia Twp., 79 / 1; Campbell v. Kalamazoo, 80 / 655; O'Neil v. West Branch, 81 / 547; Moon v. Ionia, 81 / 635; Clark v. North Muskegon, 88 / 308; Racho v. Detroit, 90 / 92; Face v. Ionia, 90 / 104; Frary v. Allen Twp., 91 / 666; Fuller v. Jackson, 92 / 197; Detweiler v. Lansing, 95 / 484; Bigelow v. Kalamazoo, 97 / 121; LaDuke v. Exeter Twp., 97 / 450; Dittrich v. Detroit, 98 / 245; Reed v. Detroit, 99 / 204; Hembling v. Grand Rapids, 99 / 293; Lincoln v. Detroit, 101 / 245; Roberts v. Detroit, 102 / 64; Williams v. Petoskey, 108 / 260; Will v. Mendon, 108 / 251; Shietart v. Detroit, 108 / 309; Walker v. Ann Arbor, 111 / 1; Baker v. Grand Rapids, 111 / 447; Holtham v. Detroit, 136 / 17; McEvoy v. Sault Ste. Marie, 136 / 172; Beaudin v. Bay City, 136 / 333; McCarthy v. Munising Village, 136 / 622; Beattie v. City of Detroit, 137 / 319; Oestereich v. Detroit, 137 / 415; Hendershott v. Grand Rapids, 142 / 140.

MUNICIPAL LIABILITY: There can be no question of the power of the legislature to make the municipalities liable for such injuries, independent of any question of where the duty to keep in repair is located, or upon whom it is imposed.—Burnham v. Byron Twp., 46 / 558. Municipal liability is the same, so far as concerns innocent persons, whether the condition of the way is due to wear and decay or to the misconduct of individuals in tearing it up.—Dotton v. Albion, 50 / 132. The liability extends to townships, cities and villages alike.—McKellar v. Detroit, 57 / 159; McArthur v. Saginaw, 58 / 361. To render a municipality liable there must be not only defects, but also fault in allowing them to exist.—Fulton I. & E. Works v. Kimball Twp., 52 / 148. A graded approach to a bridge is a part thereof, and must be kept in a reasonably safe condition.—Shaw v. Saline Twp., 113 / 342. Municipalities are not liable for accidents caused by natural accumulation of ice and snow upon its walks.—Wesley v. Detroit, 117 / 658; Newman v. Ann Arbor, 134 / 29; Corey v. Ann Arbor, 134 / 376; Id., 124 / 134. Municipal liability, see also Menard v. Bay City, 114 / 450; Griswold v. Ludington City, 116 / 401; Seeger v. Village of Hart, 160 / 134. A boy who is in fact traveling over a street in a proper manner, though such traveling includes play, is within the protection of the statute.—Beaudin v. Bay City, 136 / 333. A municipal corporation is not liable for injuries sustained by a person using the sidewalk, caused by the falling of a dead limb from a tree in the highway.—Miller v. City of Detroit, 156 / 630. The passage of the act providing for the county road system was not intended to make counties adopting it liable for defects in sidewalks in an unincorporated village.—Ferguson v. Muskegon Co., 181 / 335. The liability of municipalities for injuries upon highways is purely statutory and cannot be enlarged by construction.—Brown v. Twp. of Byron, 189 / 584.

CONTRIBUTORY NEGLIGENCE: Liability of municipality when the plaintiff is charged with contributory negligence.—Stebbins v. Keene, 55 / 557; McKeller v. Monitor Twp., 78 / 490. When careless and negligent driving contributes to the injury, there can be no recovery.—Abernethy v. VanBuren Twp., 52 / 383; McCool v. Grand Rapids, 58 / 41; Harris v. Clinton Twp., 64 / 453. While contributory negligence is not to be presumed from the knowledge of the existence of the defect, such knowledge enjoins upon a party a degree of care commensurate therewith.—Dittrich v. Detroit, 98 / 248. When a person walking along a country road in the dark steps into a hole for which he was on the lookout, his knowledge of the defect does not necessarily establish his negligence, but is only a fact for the jury to consider.—Lowell v. Watertown Twp., 58 / 568; Dundas v. Lansing, 75 / 508; Sias v. Reed City, 103 / 314-15, and cases cited. Intoxication of plaintiff.—Lincoln v. Detroit, 101 / 245. On the subject of contributory negligence, consult also Smith v. Jackson, 106 / 136; Strudgeon v. Sand Beach, 107 / 496; Bouga v. Weare Twp., 109 / 520; Church v. Howard City, 111 / 298; Baker v. Grand Rapids, 111 / 447; Welsh v. Lansing, 111 / 589; Whoram v. Argentine Twp., 112 / 20; Perkins v. Delaware Twp., 113 / 377; Schwingschlegl v. Monroe, 113 / 683; Minkley v. Springwells Twp., 113 / 347; Hunter v. Durand Village, 137 / 53; Oesterreich v. Detroit, 137 / 415; Barnes v. City of West Bay City, 138 / 93; Vander Veide v. Leroy Village, 140 / 359; Barker v. Kalamazoo City, 146 / 257; Lewis v. Marshall, 146 / 389; Scharman v. Bay Co. Bridge Commission, 158 / 77. Question for jury.—Highland v. Township of Garfield, 168 / 538. It is fundamental, in all actions for negligence, that the plaintiff has the burden of showing that he was free from contributory negligence.—Rohlfs v. Township of Fairgrove, 174 / 555. To adopt the more dangerous of two known ways of doing a particular thing, because it is more convenient than the safer way, is contributory negligence.—Id. Canfield v. Township of Gun Plains, 175 / 379. To render a negligent act the proximate cause of the alleged fall, it was not essential that the persons who constructed the ditch might have foreseen the particular consequence or injury, or manner in which it took place, if by an exercise of reasonable caution it might have been anticipated that some injury might ocur.—Morrison v. City of Ironwood, 189 / 117.

NOTICE: Notice, of defects, to contractor is not notice to township.—Moore v. Hazelton Twp., 118 / 425. Notice should be given townships.—White v. Riley Twp., 121 / 413; Pearl v. Benton Twp., 123 / 411. Notice of dangerous condition of bridges.—Aben v. Ecorse Twp., 113 / 9; Snyder v. Albion City, 113 / 275; Randall v. Southfield Twp., 116 / 501; Pearl v. Benton Twp., 131 / 275. A township is bound to make a reasonable inspection of highway bridges maintained by it.—Bettys v. Denver Twp., 115 / 228. Duty of officials to inspect.—Hunter v. Ithaca Village, 141 / 539. See Hendershott v. Grand Rapids, 142 / 140; Ness v. Escanaba, 142 / 404. Evidence that officers of a township, including the highway commissioner, had been notified of the defective condition of the bridge, and that the condition existed several months, tends to show actual and constructive notice.—Hunter v. Dwight Twp., 157 / 634. The notice to a municipality corporation is not a pleading, and need not charge negligence.—Knudsen v. City of Muskegon, 158 / 185. See Forsyth v. City of Saginaw, 158 / 201; Hughes v. City of Detroit, 161 / 283. Evidence of accidents similar to the one in litigation and occurring prior thereto, is admissible to prove both notice of the defect and negligence, but subsequent occurrences are not competent.—Branch v. Klatt, 173 / 35; Lamb v. Village of Clam Lake, 175 / 77.

HIGHWAYS: Reasonable care in the construction of highways for ordinary vehicles, such as wagons and carriages, is the duty resting upon townships under the existing statute, and in the absence of further legislation, the courts will not extend the duty so as to require highways to be kept safe for bicycles and similar vehicles.—Leslie v. Grand Rapids, 120 / 28.

OPEN TO PUBLIC USE: It is not sufficient under this statute that it be a public highway or street, but it must be opened to the public for use.—Clark v. North Muskegon, 88 / 309.

BODILY INJURY: This section limits the liability to cases of bodily injury.—Roberts v. Detroit, 102 / 66.

STATE ROADS: State roads having been placed in 1836 under the control, care and su-

pervision of the highway commissioners in the several townships, such officers are in duty bound to keep them in good repair and safe repair and, failing in this, the township is liable. —Bridge Co. v. Jasper Twp., 68 / 449 ; Sharp v. Evergreen Twp., 67 / 447 ; Delta Lumber Co. v. Wayne Co. Auditors, 71 / 576.

SUNDAY TRAVEL: A person has the right to travel on a public highway on Sunday for any lawful purpose and can recover damages resulting from a defective highway the same as if received on a week day.—Sharp v. Evergreen Twp., 67 / 443.

1739. Damages to Animals or Other Property.—If any horse or other animal, or any cart, carriage or vehicle or other property, shall receive any injury or damage by reason of neglect by any township, village, city or corporation to keep in repair any public highway, street, bridge, sidewalk, cross-walk or culvert, the township, village, city or corporation whose duty it is to keep such public highway, street, bridge, sidewalk, cross-walk or culvert in repair, shall be liable to and shall pay the owner thereof just damages, which may be recovered in an action of trespass on the case before any court of competent jurisdiction. Id., Chap. XXII, Sec. 2. § 4585.

REASONABLE TIME, ETC.: The liability does not apply until after the municipality has had reasonable time and opportunity to put the way in proper condition.—McKellar v. Detroit, 57 / 159 ; Woodbury v. Owosso, 64 / 239. As to reasonable time, see Smith v. Sherwood Twp., 62 / 159 ; Dittrich v. Detroit, 98 / 245 ; Hunter v. Durand Vil., 137 / 53.

NOTICE, ETC.: To render a municipality liable, its officers must have had knowledge or notice of the defects.—Fulton I. & E. Works v. Kimball Twp., 52 / 148 ; Woodbury v. Owosso, 64 / 239 ; Burleson v. Reading, 110 / 512. Former acts would seem to have made a municipality liable without regard to the question of notice, but the act has always been construed by this court, that it was liable only in case of negligence, and it could not be held negligent, until after notice, actual or constructive ; and later legislation was evidently framed to meet this view.—Moore v. Kenockee Twp., 75 / 341. Actual notice is not necessary.—Dotton v. Albion, 50 / 132 ; Campbell v. Kalamazoo, 80 / 656. But in the absence of actual notice municipalities are liable only for such defects in sidewalks as are apparent, or are suggested by appearances, or which are disclosed by a test in the nature of the ordinary use of such walks.—Hembling v. Grand Rapids, 99 / 294-5. The individual knowledge of officers or agents of a municipal corporation, who in such capacity have powers or duties conferred upon them with reference to a given matter is the knowledge of the corporation, and notice to them is notice to the corporation.—Dundas v. Lansing, 75 / 499. The word "notice" is not synonymous with "knowledge." Whatever fairly puts a party upon inquiry is sufficient notice, where the means of knowledge are at hand, and, if a party omits to inquire, he is then chargeable with all he might have ascertained.—Moore v. Kenockee Twp., 75 / 341. Want of knowledge may sometimes imply a want of due care ; as where township officers, whose duty it is to keep bridges in a safe condition, do not know of defects which an examination would readily disclose.—Medina Twp. v. Perkins, 48 / 71-2 ; Stebbins v. Keene Twp., 55 / 555 ; Woodbury v. Owosso, 64 / 239. See also Moon v. Ionia, 81 / 645. Notice may be presumed from a state of facts with which ignorance is incompatible unless failure to exercise reasonable care is assumed.—Dotton v. Albion, 50 / 132. See also, on the question of notice, Tice v. Bay City, 84 / 461 ; Dittrich v. Detroit, 98 / 245 ; Smith v. Sherwood Twp., 62 / 165. The knowledge or notice which the statute requires is that of the particular defect complained of, and not knowledge or notice of other defects.—Dundas v. Lansing, 75 / 507. As to notice, consult, also, Strudgeon v. Sand Beach, 107 / 496 ; Will v. Mendon, 108 / 251 ; Moore v. Kalamazoo, 109 / 176 ; Mulliken v. Corunna, 110 / 212 ; Aben v. Ecorse Twp., 113 / 9 ; Haynes v. Hillsdale, 113 / 44 ; Snyder v. Albion, 113 / 275 ; Randall v. Southfield Twp., 116 / 501 ; Smith v. Walker Twp., 117 / 14 ; Rodda v. Detroit, 117 / 412 ; Moore v. Hazelton Twp., 118 / 425 ; Pearl v. Benton Twp., 123 / 411 ; Id., 131 / 275 ; Thomas v. Flint City, 123 / 10 ; Corey v. Ann Arbor, 134 / 376. Proof of notice.—Cavanaugh v. Riverside Twp., 136 / 660. See Ness v. Escanaba, 142 / 404. Notice of claim.—Williams v. Lansing City, 152 / 169. One who claims to have notified the street commissioner may state the conversation, but cannot offer his opinion that the commissioner understood what walk was intended.—Wolverton v. Village of Saranac, 171 / 419.

1740. Highways, Bridges, Walks and Culverts Must be Kept in Repair.—It is hereby made the duty of townships, villages, cities, or corporations to keep in reasonable repair, so that they shall be reasonably safe and convenient for public travel, all public highways, streets, bridges, sidewalks, cross-walks, and culverts that are within their jurisdiction, and under their care and control, and which are open to public travel, and when the means now provided by law are not sufficient, or when the electors shall not have provided sufficient funds by vote at the annual meeting to enable any township, village or city to keep its public highways, streets, bridges, sidewalks, cross-walks and culverts in reasonable repair and in a condition reasonably safe and fit for public travel, such township, village or city is hereby authorized to levy such additional sum

upon the taxable property of such township, village or city, not exceeding five mills on the dollar, in any one year, as will enable such township, village or city to keep its public highways, streets, bridges, sidewalks, cross-walks and culverts in good repair at all times. Highway commissioners, together with the township board, and all other officers having special charge of highways, streets, bridges, sidewalks, cross-walks, and culverts, and the care or repairing thereof, are hereby made and declared to be the officers of the township, village, city, or corporation wherein they are elected or appointed, and shall be subject to the general direction of such township, village, city or corporate authorities in the discharge of their several duties. Id., Chap. XXII, Sec. 3. § 4586.

REASONABLE REPAIR: The later enactments substituted "reasonable" for "good" and indicated a purpose to prevent any responsibility for more vigilance than reasonable care requires.—McArthur v. Saginaw, 58 / 360. See Weisse v. Detroit, 105 / 484; Phalen v. Detroit, 126 / 683. The duty to keep the highways, streets and sidewalks in reasonable repair, refers only to the traveled way, and does not impose upon a city an obligation to trim trees growing between the sidewalk and curb in a public street.—Miller v. City of Detroit, 156 / 630; Patow v. Village of Oakwood, 176 / 351; Lamb v. Village of Clam Lake, 175 /77.

SAFE AND FIT FOR TRAVEL: The statute makes a city liable not only for injuries occurring through neglect to keep the streets in repair, but also such as occur by reason of the neglect of the city to keep its streets in a condition reasonably safe and fit for travel; and if, in so doing, it becomes necessary to place signals or other safeguards at certain points, or give other proper warning, the city must see that it is done or the street closed for travel. —Joslyn v. Detroit, 74 / 458; Malloy v. Walker Twp., 77 / 460. The statute is imperative to make a road reasonably safe, and whether it is so safe and fit for travel is a question for the jury.—Malloy v. Walker Twp., 77 / 462. This act does not require streets and highways to be kept absolutely safe.—Harris v. Clinton Twp., 64 / 447; Woodbury v. Owosso, 64 / 245; Shippey v. Au Sable, 65 / 501; Bigelow v. Kalamazoo, 97 / 124; Weisse v. Detroit, 105 / 486. The safety required by the statute is secured to travelers as well by night as by day, and the dangers surrounding the traveler in the darkness of night are conditions that should be taken into consideration by the authorities whose duty it is to construct and keep in repair the roadway.—Sebert v. Alpena, 78 / 167. On the question of what is, or is not "reasonably safe," consult Schrader v. Port Huron, 106 / 173; Yotter v. Detroit, 107 / 4; White v. Riley, 113 / 295; Perkins v. Delaware Twp., 113 / 377; Minkley v. Springwells Twp., 113 / 347; Shaw v. Saline Twp., 113 / 342. Where streets are undergoing repair.—Beattie v. Detroit, 137 / 319. It is the duty of a municipality to keep its streets reasonably safe and fit for travel, and it is not relieved of that duty because the street is made unsafe by the act of third persons.—Davis v. Adrian City, 147 / 301. Extra assessments.—Diamond Match Co. v. Ontonagon, 140 / 185.

DEGREE OF CARE: Municipalities must exercise, through their officers, a reasonable supervision over its ways and bridges, and, within fairly practicable limits, to be watchful of their condition and safety.—Medina Twp. v. Perkins, 48 / 71-2; Dotton v. Albion, 50 / 129. It is neglect which renders them liable.—Davis v. Jackson, 61 / 530; Moore v. Kenockee Twp., 75 / 332. Township and city officers are required to exercise only ordinary care and prudence and reasonable intelligence in performing their duty of supervising the condition of roads and bridges and keeping them in repair.—Medina Twp. v. Perkins, 48 / 72; Stebbins v. Keene Twp., 55 / 557; Woodbury v. Owosso, 64 / 239; Moore v. Kenockee Twp., 75 / 332. A great deal fairly depends on local usage in determining duties concerning highways in winter.—McKellar v. Detroit, 57 / 161. See McKormick v. West Bay City, 110 / 265.

ROADWAY: It is the roadway that the statute requires to be kept in reasonably safe condition; and whether such way requires the use of the entire width of the street must depend entirely upon the necessities of travel in any given case, and of this the authorities of a township or city must take notice at their peril.—Sebert v. Alpena, 78 / 168. It is the right of the municipality to determine what part of the highways shall be devoted to the uses of public travel and passage and what part for sidewalks, trees, gutters, etc.—McArthur v. Saginaw, 58 / 359. See Keyes v. Marcellus, 50 / 439. Where there is nothing upon the surface of a highway to give notice or knowledge that a hole was being eaten away underneath by water, a township is not chargeable with negligence, by a person breaking through and receiving an injury.—Wakeman v. St. Clair Twp., 91 / 17.

BRIDGES: When it is generally known that a bridge has become decrepit, or when it has stood so long that there is much suspicion of it, the officers of the township may not disregard the warning conveyed by these circumstances and think to excuse their neglect to take action on the ground of having had no actual notice of a dangerous infirmity.—Medina Twp. v. Perkins, 48 / 72; Campbell v. Kalamazoo, 80 / 661. But the law does not impose an impracticable rule of duty. Township officers are not expected to be experts, nor learned engineers, nor persons liberally instructed in mechanics, nor individuals equipped with the resources of experienced specialists, and nothing more can be demanded of them than reasonable intelligence and ordinary care and prudence.—Id. While it is necessary that every bridge constructed shall be made safe, as far as the uses for which it is designed are concerned, yet it does not follow that it must be adapted to all possible uses. Nor can it be expected that its designers will anticipate uses which have not been known and necessities not within ordinary experience.—Fulton I. & E. Works v. Kimball Twp., 52 / 150. But when a bridge is built upon a plan adapted to allow the passage of heavy weights, such as portable engines, the township is bound to keep it in such repair as is required of such a bridge (distinguishing from Fulton I. & E. Works v. Kimball Twp.)—Stebbins v. Keene Twp., 60 / 214. See further as to bridges, Blank v. Livonia, 79 / 1; McKeller v. Monitor Twp., 78 / 485; Scharman v. Bay Co. Bridge Commission, 158 / 77; Boos v. Twp. of Northfield, 186 / 387. Authority to repair.—Pearl v. Benton Twp., 136 / 697.

SIDEWALKS: Actionable defects.—Bennett v. St. Joseph City, 146 / 382. See Welton v.

Crystal Twp., 152 / 486; McIntyre, v. Kalamazoo, 154 / 301. Notice to street commissioner of a village of defects in a walk is notice to the village.—Weitzel v. Fowler Village, 143 / 700. In unincorporated villages; county not made responsible for defects in sidewalks of, by adoption of county road system.—Ferguson v. Muskegon Co., 181 / 335. See also Brown v. City of St. Johns, 187 / 641.

CROSSWALKS: The statute does not impose the duty upon a city to construct crosswalks, but to keep them in repair when once built.—Williams v. Grand Rapids, 59 / 51. If crosswalks are constructed in unincorporated villages and the public are thereby induced to use them, they become for such use parts of the traveled way, and the township must be held liable in case they are suffered to become unsafe and dangerous.—Frary v. Allen Twp., 91 / 669. A crosswalk, in order to fall within the protection of the statute, need not necessarily span the entire street.—Frary v. Allen Twp., 91 / 670. The construction of a crosswalk in accordance with the requirements of the locality, adopting the means usually adopted, and which are best adapted for the convenience of the public, cannot be said to be negligent construction. A crosswalk must be reasonably safe, in view of the purpose for which it is constructed, the necessary uses of the street and all the varying conditions.—Bigelow v. Kalamazoo, 97 / 123. Village authorities have the right to determine how their cross-walks shall be built.—Shippey v. Au Sable, 65 / 494.

CARE AND CONTROL: Highways or bridges within the limits of an incorporated village are not always under the care and control of the village authorites. (Quinlan v. Manistique, 85 / 22.) The words "under their care and control" must be held to be intended to exempt villages so situated from liability.—Frary v. Allen Twp., 91 / 669.

DEFECTS: Township officers must be on the watch for hidden defects in township bridges, and their neglect of reasonable and ordinary effective watchfulness will make the township liable for injuries resulting from such defects.—Stebbins v. Keene Twp., 55 / 557. See Carver v. D. & S. P. R. R. Co., 61 / 590; Sebert v. Alpena, 78 / 165.

OBJECTS LEFT IN STREETS: As to an injury to a horse from stepping on one of the several cobble stones scattered about the street, the supreme court was equally divided and the action of the circuit judge in taking the case from the jury was not disturbed.—McCool v. Grand Rapids, 58 / 41. See Agnew v. Corunna, 55 / 428; McArthur v. Saginaw, 58 / 361. When a municipal corporation is negligent for permitting the obstruction of a street by a pile of crushed stone and sand.—Walls v. City of Detroit, 171 / 612.

SNOW AND ICE: This act applies only to injuries that are due to a way's being out of repair and not to such as are caused by the mere accumulation of ice and snow.—McKellar v. Detroit, 57 / 158; Hutchinson v. Ypsilanti, 103 / 13; Rolf v. Greenville, 102 / 544; Kannenburg v. Alpena, 96 / 53. See Canfield v. Railway Co., 78 / 356; Black v. Manistee, 107 / 60; Gavett v. Jackson, 109 / 408. See Pringle v. Detroit, 152 / 445; Jefferson v. City of Sault Ste. Marie, 166 / 340. But a township may be liable if it constructs a public road in such a manner as to be unsafe whenever covered with a natural accumulation of ice and snow.—Stanton v. Township of Webster, 170 / 428. See Lubbers v. Township of Manlius, 172 / 387; Mayo v. Village of Baraga, 178 / 171.

HOLE BESIDE ROAD: A stump had been left beside a road leading from a village to the country and children had dug a hole near the stump. A woman in the dark started to go across lots and fell into the hole. Held that this was not a defect which the village authorities were bound to remedy, if they did not suppose the needs of public travel required it.—Keyes v. Marcellus, 50 / 439.

WHEN MUST BE CLOSED: The law was not meant to apply to highways in progress of construction or repair. A city while grading and paving a street must close to public travel that portion thereby rendered unfit or unsafe, in order to suspend the duty imposed by statute to keep its streets which are open to public travel in good repair. And the same rule would apply to a highway or bridge in the country.—Southwell v. Detroit, 74 / 438. See Joslyn v. Detroit, 74 / 460; Speck v. Township of Bruce, 166 / 550. See Beattie v. Detroit, 137 / 319.

PLAN OF CONSTRUCTION: Municipalities have the right to determine for themselves the plan and manner of constructing their streets, bridges, crosswalks, etc., and will not be liable merely because the plan is defective; or not so good as some other might be.—Shippey v. Au Sable, 65 / 500; Williams v. Grand Rapids, 59 / 51; Davis v. Jackson, 61 / 500; Fulton I. & E. Works, v. Kimball Twp., 52 / 150. But this statute cannot be given a construction that would relieve a municipality from liability by saying that it had adopted a method of construction and had built according to that plan. A municipality cannot construct a road, not safe and convenient for public travel, and shield itself behind its legislative power to adopt a plan and method of building.—Malloy v. Walker, 77 / 462; Bigelow v. Kalamazoo, 97 / 127. See also, Sebert v. Alpena, 78 / 165; Barron v. Detroit, 94 / 601.

1741. Act Not Applicable to Certain Highways.—The provisions of this act shall not apply to public highways which have not been in use ten years; but nothing in this section shall be construed as exempting townships, villages and cities from maintaining their streets, bridges, sidewalks, crosswalks and culverts, and the approaches to bridges in a safe condition for public travel. Id., Chap. XXII, Sec. 4. § 4587.

TEN YEARS: The first clause withholds the remedy as to all public highways which have not been in use ten years.—McKeller v. Monitor Twp., 78 / 491. This same principle was applied in the case of a village street.—Clark v. North Muskegon, 88 / 309. See also Gage v. Pittsfield Twp., 120 / 436. But later it was held that this provision applies only to public highways in townships; and, as to sidewalks, a city is bound to keep them in safe condition for public travel from the time they are built and opened for travel.—Fuller v. Mayor, etc., 92 / 199. See Schelske v. Orange Twp., 147 / 135.

1742. Common Law Liability of Township Abrogated.—No township, village or city in this State shall be liable in damages, or otherwise, to

any person or persons for bodily injury, or for injury to any property sustained upon any of the public highways, streets, bridges, sidewalks, crosswalks or culverts, in such townships, villages or cities, except under and according to the provisions of this act, and the common law liability of townships, villages and cities of this State, for or on account of bodily injuries sustained by any person by reason of neglect to keep in repair public highways, streets, bridges, sidewalks, crosswalks or culverts, is hereby abrogated. Id., Chap. XXII, Sec. 5. § 4588.

COMMON LAW LIABILITY: The supreme court of this state held that there was no common law liability, but the federal courts have held otherwise. This section was aimed at the holding of the federal courts, which enabled a non-resident to recover, while an inhabitant of this state had no remedy.—Racho v. Detroit, 90 / 96; Face v. Ionia, 90 / 108. See also Roberts v. Detroit, 102 / 64; Forsyth v. Saginaw, 158 / 201.

1743. Defects in Original Construction.—If said public highway, street, bridge, sidewalk, crosswalk or culvert is in a condition which is not reasonably safe and fit for travel either by persons, animals or vehicles, because of defects in the original construction, then it shall not be necessary to show that any notice thereof was brought to the attention of such township, village or city, before a recovery can be had. If the defect is caused by said highway, street, bridge, sidewalk, crosswalk or culvert becoming out of repair, it shall be conclusively presumed that the township, village or city had notice thereof and a reasonable time in which to repair the same, provided said defect has existed for a period of thirty days or longer. Id., Chap. XXII, Sec. 6. § 4589.

1744. When Notice of Defect Not Necessary.—In the event any person shall sustain an injury either to his person or property upon any defective highway, street, bridge, sidewalk, crosswalk, or culvert, because of the defective condition thereof as herein provided, it shall not be necessary before such person can recover damages therefor to show that any written notice was served upon the township, village or city or any officers thereof, of such defective condition before the injury took place, but in cases where a notice is necessary, in order to make such township, village or city liable, either actual or constructive notice shall be sufficient. Id., Chap. XXII, Sec. 7. § 4590.

1745. Notice of Injury to be Served on Township.—In the event damages are sustained by any person, either by bodily injuries or to his property, because of the defective condition of any highway, street, bridge, sidewalk, crosswalk or culvert in any city or incorporated village of this State where written notice of such injury and defect is now required by law to be served upon such village or city before recovery can be had, it will be necessary to show that such person did serve written notice upon said city or village within sixty days from the time of the happening of such injury. Said notice may be served upon any member of the common council, city of village clerk, board of public works, street commissioner, marshal or other city or village officer, except policeman or fireman. The notice will specify the location and nature of said defect, the injury sustained, and the names of the witnesses known at the time by claimant. If required by the common council or committee thereof, said claimant shall produce his witnesses before said common council or committee, and they may be sworn and examined as to the nature of the claim, the amount thereof, and the extent of the injury. The common council or committee shall have power to subpoena witnesses for such

hearing. No other or further notice shall be required. The intent and purpose of the provisions of this chapter are to make the law of liability on the part of townships, villages and cities for injuries sustained by persons because of the defective condition of the highways and the procedure in giving notice thereof, uniform throughout the State, and to repeal all laws or acts of the legislature be the same general, local or special which are inconsistent with or contravening the provisions herein. All actions in court under this act must be brought within two years from the time said injury was sustained. Id., Chap. XXII, Sec. 8. § 4591.

CHAPTER XXI.

LAW OF THE ROAD.

1746. Must Drive to the Right.—Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, carts, sleds, sleighs, or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the traveled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference. Act 283 of 1909, Chap. XXIII, Sec. 1.§ 4592.

For provisions of law relative to the operation of motor vehicles, motor trucks, steam engines or traction engines on the highways, see Sections 1765 to 1797 of this Guide.

USE OF HIGHWAY: A highway is for the use of the general public for passage and traffic, and the restrictions upon its use are such only as are required to secure to the public the largest practical benefits from its use.—Macomber v. Nichols, 34 / 212. And the use of them with horses, steam engines and other methods of transit is permissible if not inconsistent with present methods.—Id. And they must be used with regard to their lawful use by others.—People's Ice Co. v. The Excelsior, 44 / 229; Burford v. Grand Rapids, 53 / 98. Those using them for passage and travel have the first right; and their use must not be obstructed if it can be avoided.—Id. The "traveled part of the road" means that part which is wrought for traveling, and is not confined simply to the most traveled wheel track.—Daniels v. Clegg, 28 / 33. The rights of travelers on a public highway are mutual and co-ordinate, and it is the duty of each to so use his right of passage as not to cause injury or detriment to another having a like right.—Pigott v. Engle, 60 / 221.

KEEP TO THE RIGHT: In the use of a public highway one has a right to expect from others ordinary prudence and to rely upon that in determining his own means of using the road; he may travel upon any portion of it except when he is about to meet and to pass another vehicle, when he must seasonably turn to the right of the middle of the traveled part of the road.—Daniels v. Clegg, 28 / 32. Where a jury finds that a party was traveling in a beaten track there can be no finding that he was on the wrong side of the road.—Joslin v. LeBaron, 44 / 160.

FAST DRIVING: Potter v. Moran, 61 / 61. Fast driving an ambulance upon a public street.—People v. Little, 86 / 125. Negligent driving.—Hill v. Snyder, 44 / 318; Joslin v. Grand Rapids Ice and Coal Co., 53 / 322; Williams v. Edmunds, 75 / 92; Post v. U. S. Express Co., 76 / 574; Boick v. Bissell, 80 / 261; Lazell v. Kapp, 83 / 39; Tyler v. Nelson, 109 / 37.

1747. Penalty.—Every person offending against the provisions of the preceding section, shall, for each offense, forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offense: Provided, That proceedings shall be commenced for the recovery of such forfeiture within three months after the offense shall have been committed, and any action for such damages shall be commenced within one year after the cause of action shall have accrued. Id., Chap. XXIII, Sec. 2. § 4593.

1748. Unlawful to Employ Driver Addicted to Drink.—No person owning, or having the direction or control of any coach, or other carriage or vehicle running or traveling upon any road in this State, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such coach, carriage, or other vehicle, who is addicted to the use of intoxicating liquors; and if any such person shall violate

the provisions of this section, he shall forfeit at the rate of five dollars per day for all the time during which he shall have kept such driver in such employment. Id., Chap. XXIII, Sec. 3. § 4594.

1749. Owner to Discharge Driver Guilty of Intoxication.—If any driver, while actually employed in driving such coach, carriage, or vehicle, shall be guilty of intoxication, it shall be the duty of the owner or person having charge or control of such coach, carriage, or other vehicle, on receiving written notice of the fact, signed by any passenger who witnessed the same, and certified by him under oath, forthwith to discharge such driver from such employment; and every person who shall retain, or have in such service, within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for all the time during which he shall keep any such driver in such employment after receiving such notice. Id., Chap. XXIII, Sec. 4. § 4595.

1750. Penalty for Running Horses.—No person driving any carriage or vehicle for the conveyance of passengers for hire upon any road or highway in this State, with or without passengers therein, shall run his horses, or cause or permit them to run, upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both, at the discretion of the court. Id., Chap. XXIII, Sec. 5. § 4596.

1751. Penalty for Leaving Horses Unhitched.—It shall not be lawful for the driver of any carriage used for the conveyance of passengers for hire, to leave the horses attached thereto, while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take charge and guidance of them, so as to prevent their running, and if any driver shall violate the provisions of this section, he shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense. Id., Chap. XXIII, Sec. 6. § 4597.

1752. Owners Liable for Injury to Passengers.—The owners of every carriage running or traveling upon any turnpike road or public highway, for the conveyance of passengers for hire, shall be liable jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable. Id., Chap. XXIII, Sec. 7. § 4598.

CHAPTER XXII.

NOXIOUS WEEDS.

1753. Commissioner and Overseers to Execute Law.—It shall be the duty of the highway commissioner and the overseer of highways in each road district to see that the provisions of this act are carried out within

the limits of his road district. Any highway commissioner or overseer who shall refuse or neglect to perform the duties required by this act shall be deemed guilty of a misdemeanor and upon conviction thereof in a court of competent jurisdiction shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars, together with the costs of prosecution, or by imprisonment in the county jail for a period not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court. Act 283 of 1909, Chap XXIV, Sec. 1. § 4601.

1754. Commissioner and Overseer to Cut Brush.—It shall be the duty of the overseer and commissioner of highways to cut or cause to be cut, prior to the first day of July in each year, all brush within the limits of any highway passing by or through such lands: Provided, however, That this section shall in no wise apply to young trees which have been set out or preserved by abutting property owners for shade or other purposes. Id., Chap. XXIV, Sec. 2. § 4602.

1755. Owner Must Destroy Canada Thistles and Other Noxious Weeds.—It shall be the duty of every owner, possessor or occupier of land or of every person or persons, firm or corporation having charge of any lands in this State to cut or cause to be cut down and destroyed all Canada thistles, milkweed (asclepias cornutus), wild carrots, oxeye daisies, or other noxious weeds growing thereon, or on any highway passing by or through such land, at least twice in each year, once before the first day of July and again before the first day of September, and as much oftener as may be necessary to prevent them going to seed, and if any owner, possessor or occupier of land, or any person or persons, firm or corporation having charge of any lands in this State shall, knowingly, suffer any Canada thistles, milkweed, wild carrots, or other noxious weeds to grow thereon, or on any highway passing by or through such land, or shall suffer the seed to ripen, so as to cause or endanger the spread thereof, he or they shall, on conviction in any court of competent jurisdiction be liable to a fine of ten dollars, together with costs of prosecution, for every such offense and he or they shall pay the cost of cutting and destroying such weeds and an additional ten per centum as hereinafter provided. Id., Chap. XXIV, Sec. 3. § 4603.

1756. Commissioner to Post Notices Requiring Cutting of Noxious Weeds.—It shall be the duty of the commissioner of highways in each road district to give general notice in the following manner to every owner, possessor or occupier of land and to every person or persons, firm or corporation having charge of any lands in this State, whereon noxious weeds are growing, or by or through which land a highway passes, to cut and destroy such noxious weeks: Four notices, each not less than two feet square shall be printed in clear, readable type and posted one in each of four conspicuous places in the road district, and notices shall also be published in some local paper having a general circulation in the township. These notices shall set forth the fact that all noxious weeds must be cut on or before a certain date, which date shall be fixed by the commissioner. The posting and publishing of such notices shall take place at least ten days prior to the date upon which the weeds must be cut, and such notice may read as follows:

To owners, possessors or occupiers of land, or any person or persons, firm or corporation having charge of any lands in this State:

Notice is hereby given that all noxious weeds growing on any land in the township of ....., county of ....., or within the limits of any highway passing by or through such lands must be cut down and destroyed on or before the ..... day of ....., A. D. nineteen hundred .....

Failure to comply with this notice on or before the date mentioned or within ten days thereafter shall make the parties so failing liable for the costs of cutting same and an additional levy of ten per centum of such cost, to be levied and collected against the property in the same manner as other taxes are levied and collected.

Dated .....

.....

Commissioner of Highways of the Township of .....
County of .....

Id., Chap. XXIV, Sec. 4. § 4604.

1757. Commissioner May Enter Upon Lands to Destroy Weeds.—In case the owner, possessor or occupier of land or the person or persons, firm or corporation having charge of any land shall refuse or neglect to comply with such notice and to cut the weeds or brush on or before the date stated in such notice or within ten days thereafter, it shall be the duty of the highway commissioner and overseer of highways, or some one whom said overseer may employ to assist in carrying on the work, to enter upon the land and to cause all such noxious weeds to be cut down with as little damage to growing crops as may be, and he shall not be liable to be sued in any action of trespass therefor. Id., Chap. XXIV, Sec. 5. § 4605.

1758. Audit and Payment of Accounts for Cutting Weeds.—Highway commissioners and overseers of highway shall keep an accurate account of the expenses incurred by them in carrying out the provisions of section five of this chapter, with respect to each parcel of land entered upon therefor, and with respect to weeds and brush cut from any highway passing by or through such parcel of land, and shall make a sworn statement of such account and present same to the township board of the township in which the expense was incurred. The township board is hereby authorized and required to audit and allow such account and order the same to be paid from the fund for general township purposes of said township out of any moneys in the township treasury not otherwise appropriated. Id., Chap. XXIV, Sec. 6. § 4606.

1759. Expenditures for Cutting Weeds to be Levied on Lands.—The supervisor of the township shall add to all such expenditures as have been so audited and allowed ten per centum of the amount of such expenditures and shall cause all such expenditures, together with the additional ten per centum, to be severally levied on the lands on which such expenditures were made, and the same shall become a lien upon said land and shall be collected in the same manner as other township taxes are collected; the same when collected shall be paid into the general township fund to reimburse the outlay therefrom aforesaid. Id., Chap. XXIV, Sec. 7. § 4607.

1760. Destruction of Weeds on Public Lands.—It shall be the duty of the highway commissioner and overseer of highways to cut all noxious weeds on state lands, school land and so forth and all brush and noxious

weeds on highways passing by or through the same and the cost of same shall be allowed by the township board and paid by the township treasurer of the township in which such land is located. Id., Chap. XXIV, Sec. 8. § 4908.

1761. Weeds on R. R. or Plank Road Lands.—All railroad corporations or gravel or plank road companies doing business in this State shall, each year, between the fifteenth day of June and the first day of July, and again between the tenth day of August and the first day of September, and at any time during the year so often as shall be sufficient to prevent Canada thistles, milkweed, wild carrots, ox-eye daisies, or other noxious weeds going to seed, cause all Canada thistles, milkweed, wild carrots or other noxious weeds growing upon lands occupied by them in any city, village or organized township in this State to be cut down and destroyed. In case any railroad company or gravel or plank road company shall refuse or neglect to comply with the requirements specified in the second section of this chapter, then it shall be lawful for said overseer of highways to cut and destroy said Canada thistles, milkweed, wild carrots, or other noxious weeds between the first day and the fifth day of July, inclusive, and between the first and fifth days of September, inclusive, in each year or so often as shall be sufficient to prevent said Canada thistles, milkweed, wild carrots, or other noxious weed going to seed to endanger the spread thereof, at the expense of the corporation on whose lands said Canada thistles, milkweed, wild carrots, or other noxious weeds shall be so cut, at the rate of three dollars per day for the time necessarily occupied in cutting and destroying, to be recovered in any court of competent jurisdiction in this State. Id., Chap. XVIV, Sec. 9. § 4609.

1762. Prosecutions for Violations of Act.—It shall be the duty of the prosecuting attorney of the county to prosecute all violations of the provisions of this act which shall come to his knowledge. Id., Chap. XXIV, Sec. 10. § 4610.

1763. Unlawful to Scatter Noxious Weeds, Etc.—Hereafter it shall be unlawful for any person or persons to intentionally scatter or deposit any noxious weeds, wild grass, or foul seeds along or on any public highway or in any of the streams, lakes or other inland waters within this State. Act 184 of 1917, Sec. 1.

1764. Penalty for Scattering Weeds.—Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail for not less than five days nor more than thirty days, or by both such fine and imprisonment in the discretion of the court. Id., Sec. 2.

CHAPTER XXIII.

MOTOR VEHICLES ON HIGHWAYS.

1765. Brakes, Horns, Lamps, Etc.—Every motor vehicle, operated and driven upon the public highways of this State, shall be provided with adequate brakes sufficient to control the vehicle at all times, and a suit-

able and adequate bell, horn or other device for signaling, and shall, during the period from one hour after sunset to one hour before sunrise display at least one lighted lamp on the front and one on the rear of such vehicle, which shall also display a red light visible from the rear. The white rays of such rear lamp shall shine upon the number plate carried on the rear of such vehicle. The light of the front lamp shall be visible at least two hundred feet in the direction in which the motor vehicle is proceeding. Every motor vehicle or other vehicle equipped with and using electric light or lights upon any of the public highways of this State, shall be provided and equipped with some practical and efficient device or devices whereby the forward light or lights of such vehicle may be dimmed or lessened at the will of the driver or chauffeur to such an extent that such electric light or the reflection therefrom through said forward light or lights will not interfere with the sight of nor temporarily blind the vision of the driver of an approaching vehicle; and it shall be the duty of every chauffeur or driver of such motor vehicle or other vehicle equipped with and using electric lights upon the public highways of this State to effectually apply such dimmer to the forward light or lights of the vehicle being driven by him and cause such light or lights to be dimmed and lessened so as not to interfere with the sight or temporarily blind the vision of the driver of any approaching vehicle: Provided, That motor bicycles or motor cycles shall be required to display but one lighted lamp, such lamp to be placed on the front of the vehicle so that it shall be visible one hundred feet in the direction in which the motor vehicle is proceeding. There shall be displayed on the face of such lamp the registration number in figures not less than one inch in height, and placed thereon in such manner so that when the lamp is lighted the number may be read at a distance of at least fifty feet. Act 302 of 1915, Sec. 16. § 4812.

1766. **Use of Non-Skidding Devices.**—No person shall operate or drive on the public highways of this State a motor vehicle on any of the wheels of which is a tire chain or non-skidding contrivance or tire composed in whole or part of metal, except when such highways are wet and slippery or covered with ice or snow. Id., Sec. 17. § 4819.

1767. **Stopping on Signal.**—A person operating a motor vehicle shall, at the request or on signal by putting up the hand from the person riding, leading or driving a horse or horses or other draft animals, bring such motor vehicle immediately to a stop, and if traveling in an opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal: Provided, That in case such horse or animal appear badly frightened, or the person operating such motor vehicle be requested so to do, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others. Whenever a person operating a motor vehicle shall meet on a highway any other person riding or driving a horse or horses or other draft animals or any other vehicle, and there being no occasion to stop as above provided, the person operating such motor vehicle shall seasonably turn the same to the right of the center of the traveled portion of the highway, while the person approaching shall likewise turn from the

center of the traveled portion of the highway so as to pass the motor vehicle on the opposite side of the center of the highway to which the motor vehicle has been turned. And any person so operating any motor vehicle shall, at the intersection of a public highway, keep to the right of the intersection of the center of such highway when turning to the right and pass to the right of such intersection when turning to the left. Id., Sec. 18. § 4814.

1768. Turn to the Right.—If a vehicle drawn by a horse or horses or other draft animals, or a motor vehicle, be overtaken by any motor vehicle, and the person in charge of such motor vehicle expresses a desire to pass, it shall be the duty of the driver of any such vehicle or motor vehicle so overtaken as aforesaid, to turn to the right of the center of the wrought or traveled portion of the highway, and give the person so making the request an opportunity to pass, but in passing, the person in charge of such motor vehicle and the other male occupants thereof over the age of fifteen years shall give such assistance as they are able, to the occupant or occupants of the vehicle they are passing, if assistance is asked, and in thus passing the chauffeur shall use all due care to avoid accidents. Id., Sec. 19. § 4815.

1769. Accidents.—In case of accidents to person or property upon any public highway, due to the operation thereon of any motor vehicle, the person operating such motor vehicle shall stop and give such reasonable assistance as can be given, and shall, upon request of the person injured or any other person, give such person his name and address, and if not the owner, the name and address of the owner of such motor vehicle, together with the registered number thereof. Id., Sec. 20. § 4816.

In the exercise of police power the legislature may regulate the operation of automobiles on the public highways.—Johnson v. Sergeant, 168 / 444.

1770. Rate of Speed.—No person shall operate a motor vehicle upon a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person or the safety of any property; and shall not in any event while upon any highway run at a higher rate of speed than twenty-five miles an hour, and within the corporate limits of all cities and villages the rate of speed shall not be greater than ten miles an hour in the business portion of any such city or village, and not greater than fifteen miles an hour in all other portions thereof, subject, however, to the other provisions of this act. Upon approaching an intersecting highway, a bridge, dam, sharp curve or steep descent, and also in traversing such intersecting highways, bridge, dam, curve or descent, a person operating a motor vehicle shall have it under control and operate it at such speed as is reasonable and proper, having regard to the traffic then on such highway and the safety of the public. Id., Sec. 21. § 4817.

1771. Slow Down and Give Warning.—Upon approaching a person walking in the roadway of a public highway, or a horse or horses, or other draft animals being ridden, led or driven thereon, a person operating a motor vehicle shall slow down to a speed not exceeding ten miles an hour and give reasonable warning of its approach and use every reasonable precaution to insure the safety of such person or animal, and in

case of a horse or horses or other draft animals, to prevent frightening the same. Id., Sec. 22. § 4818.

1772. Speed in Parks.—Local authorities may, notwithstanding the provisions of this act, make, enforce and maintain such reasonable ordinances, rules or regulations concerning the speed at which motor vehicles may be operated in any park or parkway within a city or incorporated village, but in no case to permit a greater speed than is provided in this act, and as a condition thereto, such local authorities must, by signs at each entrance of such park and along said parkway, conspicuously indicate the rate of speed permitted or required, and may exclude motor vehicles from any cemetery or grounds used for the burial of the dead. Id., Sec. 23. § 4819.

1773. Half of Motor Vehicle Tax Apportioned to Townships.—Fifty per cent of the amount collected from the registered motor vehicles in each county shall be returned to the treasurer of each county, to be used to maintain the highways by the local authorities: Provided. That in counties not operating under the county road system, the board of supervisors shall apportion such tax received to the several townships and cities according to the assessed valuation thereof, to be used by such townships and cities for the construction and maintenance of the highways. Id., Sec. 34. § 4830.

1774. Maximum Weight.—It shall be unlawful to operate any vehicle upon the public highways of this State, the gross weight of which exceeds fifteen tons. Act 152 of 1917, Sec. 1.

1775. Maximum Wheel Loads.—It shall be unlawful to operate any vehicle, except motor driven vehicles, upon the highways of this State, the gross weight on any wheel of which exceeds that given in the schedule under section three, this act. Id., Sec. 2.

1776. Schedule of Wheel Loads.—

Width of Tire in Inches.	1	1½	2	2½	3	3½	4	4½	5
Maximum Wheel Load in Pounds.	400	600	800	1100	1400	1800	2200	2700	3200
Maximum Load for 4 Wheels.	1600	2400	3200	4400	5600	7200	8800	10800	12800

Id., Sec. 3.

1777. Type of Brakes.—In case a vehicle is equipped with a braking device, said brakes shall be of a friction type and not of a type that will cause a deadlock of the wheels when applied. Id., Sec. 4.

1778. Tire Gauge.—No motor trucks or trailers, hereafter operating upon the public highways of the State, shall have a gauge of more than seventy-five inches measured from center of tire to center of tire, and shall not be more than ninety-six inches wide over all nor over twelve feet six inches in height. Id., Sec. 5.

1779. Metal Tires.—No motor trucks or trailers, hereafter operating upon the public highways of this State, shall be equipped with driving

wheels the tires of which are of metal that may come in contact with the surface of the road, or which have a partial contact of the metal with the surface of the road, except where chains or other non-skidding devices are used: Provided, That motor trucks or trailers may be used on any road or highway which are not part of the state reward system: Provided, That should any improved highway be damaged by the use of chains or other non-skidding devices, the person, company or corporation owning or operating such vehicle, shall be liable to arrest and penalties as hereinafter provided. Id., Sec. 6.

1780. Information to be Displayed on Vehicle.—All motor trucks or trailers, now operating or hereafter placed in operation, upon the public highways of this State, shall have placed upon them information relative to their height of wheel, width of tire, gauge, width over all, weight and carrying capacity. This information shall be conspicuously placed upon the vehicle. Id., Sec. 7.

1781. Weight on Rear Axle.—On the rear axle three-quarters of the gross weight of a motor truck or trailer, and its respective carrying capacity, must be within the limits of the schedule of the respective diameters of wheel, size of tire, and speed per mile, as shown in the schedule under section fourteen, this act: Provided, That trailers having two wheels, at least three-quarters of the gross weight of the trailer and its respective load shall be upon the axle of the trailer. Id., Sec. 8.

1782. Weight on Front Axle.—The front axle shall carry the remainder of the weight of a motor truck or trailer and load combined, and must be within the limits of the schedule of the respective diameter of wheel, size of tire and speed per mile, as shown in the schedule for single tires, under section fourteen, this act. Id., Sec. 9.

1783. Applicable to Busses.—This act shall apply to motor trucks or trailers used as busses for carrying passengers. Id., Sec. 10.

1784. Not Applicable to Certain Farm Implements.—This act shall not apply to farm implements or machinery used in road construction. Id., Sec. 11.

1785. Size of Tire.—The size of tire and height of wheel shall be taken as that size printed upon a tire by the manufacturer. Id., Sec. 12.

1786. Speed.—When a truck is hauling a trailer, the speed shall be governed by the vehicle having the lowest mile per hour rating. Id., Sec. 13.

1787. **Schedule.**—

SCHEDULE FOR THE REGULATION OF MOTOR TRUCKS AND TRAILERS UPON THE HIGHWAY.

Table for a Wheel of 32 inches Diameter:

Size of Tire in Inches.	SINGLE TIRE.		DOUBLE TIRE.	
	Maximum Wheel Load in Pounds.	Miles Per Hour.	Maximum Wheel Load in Pounds.	Miles Per Hour.
2	700	20	1400	18
2½	900	20	1800	18
3	1200	20	2400	18
3½	1600	20	3200	16
4	1900	18	3800	14
5	2200	16	4400	13
6	2700	14	5400	12
7	3200	12	6400	10

For a thirty-four-inch wheel, multiply the above maximum wheel load figures by one and one-tenth.

For a thirty-six-inch wheel, multiply the above maximum wheel load figures by one and two-tenths.

For a thirty-eight-inch wheel, multiply the above maximum wheel load figures by one and three-tenths.

For a forty-inch wheel, multiply the above maximum wheel load figures by one and four-tenths.

For a forty-two inch wheel, multiply the above maximum wheel load figures by one and five-tenths.

For a forty-four-inch wheel, multiply the above maximum wheel load figures by one and six-tenths. Id., Sec. 14.

1788. **Maximum Carrying Capacity Limited.**—Whenever by reason of the thawing of frost, or rains, the roads are in soft condition, the maximum carrying capacity of tires on all vehicles shall be limited to one-half the carrying capacity of tires as provided in this act. Id., Sec. 15.

1789. **Penalty; Permits.**—Any person, firm or corporation which moves, or causes to be moved any vehicle over or along the public highways contrary to the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof before a justice of the peace or other court having competent jurisdiction, shall be subject, for each offense, to a fine of not less than five dollars nor more than fifty dollars, or imprisonment in the county jail for not to exceed thirty days, or both such fine and imprisonment at the discretion of the court: Provided, That the provisions of this act shall not apply to the moving of any vehicle, for which a permit has been granted by the highway officials having jurisdiction. Any permit so given shall state all conditions thereto, shall be

in writing, and shall have effect not longer than thirty days from the date when issued. Id., Sec. 16.

1790. Duty of Highway Commissioner and Other Officers.—It shall be the duty of the sheriff of each county to cause to be made as his deputies all county, district and township highway commissioners, and others where necessary, and these deputies shall have power to arrest on sight or upon a warrant any person having violated any provisions of this act. Any such deputy who shall wilfully disregard enforcing the provisions of this act shall be guilty of neglect of duty. Id., Sec. 17.

1791. Unlawful for Intoxicated Person to Drive Motor Vehicle.—Hereafter it shall be unlawful for any intoxicated person or any person under the influence of any exhilarating or stupefying drug, to drive, operate or have charge of the power or guidance of any automobile, motorcycle or other motor vehicle, upon any public highway, street, avenue, driveway or alley within this State. It shall also be unlawful for the owner of any motor vehicle, or for the person having such vehicle in charge or under his control to knowingly permit the same to be driven or operated upon any public highway, street, avenue, driveway or alley within this State by any person under the influence of intoxicating liquor or any exhilarating or stupefying drug. Any person violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not less than fifty dollars, nor more than one hundred dollars, or to imprisonment in the county jail or the Detroit house of correction for not more than ninety days, or to both such fine and imprisonment in the discretion of the court. Act 164 of 1917.

1792. Use of Steam Engines on Highways.—It shall be unlawful for any person, company or corporation owning or controlling any carriage, vehicle, traction or other engine propelled by steam, by themselves, their servant, agent or employe, to allow the same to stand upon any bridge or culvert in any highway for taking a supply of water, or other purpose; and it shall also be unlawful to permit or use the same to pass over, through or upon any public highway, road or street, unless such owner, owners, agent, servant or employe shall send before the same a person of mature age, at least ten rods and not more than forty rods in advance, except that in incorporated cities and villages such persons shall not be less than four rods and not more than ten rods in advance, to notify and warn persons traveling or using such highway, road or street with horses or other domestic animals, of the approach of such carriage, vehicle or engine. And upon the approach of any person or persons with horse or horses, or other domestic animals, from behind or in front, said owner or owners, agent, servant, or employe of such steam vehicle, carriage or engine having the same in charge, shall cause the same to be stopped, and the steam of such engine to be immediately shut off, and to render such assistance as will enable such team or teams of horses, or other domestic animals to pass in safety; and at night such persons shall carry a red light; and such persons shall carry and use plank sufficient to plank all crosswalks: Provided, That the provisions of this act shall not be construed to apply to automobiles: Provided further, That no township shall be liable for any damages sustained by the breakage of any bridge or culvert by any steam engine or steam vehicle weighing more than the lawful carrying capacity of such bridge

or culvert at the time it was built. Act 145 of 1887, Sec. 1. § 4793, as Am. by Act 181 of 1917.

USE OF STEAM ENGINES: Persons making use of horses by means of travel or traffic by the highways have no rights therein superior to those who make use of the ways in other permissible modes.—Macomber v. Nichols, 34 / 213. If one in making use of horses as a means of locomotion on the highway is injured by the act or omission of another using a steam locomotive, the question is not one of superior privilege, but whether, under all the circumstances, there is negligence imputed to some one, and if so, who should be accountable for it.—Id. In an action for an injury caused by a horse taking fright on a highway at an engine being propelled by steam it is error to permit the right of recovery to turn upon whether the engine was calculated to frighten horses of ordinary gentleness. The bringing of an unsightly object into the common highway is not necessarily wrong because of its tendency to frighten horses any more than the construction of a bridge over a river is a wrong because of its tendency to delay vessels.—Id.

LIABILITY: For liability of municipality for injuries received by person or engine by reason of defective bridge, etc.—Stebbins v. Keene Township, 55 / 552; Woodbury v. Owosso, 64 / 239. Violation of the statute requiring the sending ahead of a person to give warning of the approach of a steam vehicle, constitutes contributory negligence, preventing the recovery of damages to a steam roller in a collision at a crossing of defendant electric railway company.—Construction Co. v. Pt. H., St. C. & M. C. Ry. Co., 173 / 1.

TITLE OF ACT: By the term "regulate" in the title of this act, both government and restriction are intended.—Westgate v. Adrian Twp., 161 / 333.

1793. Steam Whistles.—Any person or persons who, while traveling upon the public highways of this State with a steam engine, steam wagon or other vehicle which is, in whole or in part, being worked, run or operated by steam, or to which a steam whistle is attached, shall blow or sound, or cause to be blown or sounded, any steam whistle while so traveling upon the public highways of this State, shall be guilty of a misdemeanor, except when deemed necessary by the operator to blow the whistle to avoid accidents. Id., Sec. 2. § 4794, as Am. by Act 181 of 1917.

1794. Punishment for Violation of Act.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding fifteen days, or by both such fine and imprisonment, in the discretion of the court. Any person, company or corporation violating any of the provisions of this act shall also be liable for all damages sustained thereby by any person or persons traveling upon or using said highway with horses or other domestic animals, to be recovered in an action of trespass on the case. Id., Sec. 3. § 4795.

1795. Not Applicable to Railroads.—This act shall not apply to railroads. Id., Sec. 4. § 4796.

1796. When Permission Required to Move Traction Engines, Etc., on Highway.—It shall be unlawful to move any traction engine or similar heavy machinery over the public highways, by its own power or otherwise, during the months of March, April and May, or at any other time, if by reason of the thawing of frost, or rains, or any other cause, the roads are in soft condition, rendering them unfit for the passage over them of such heavy machinery without damage to the highways, or if the engines are equipped with lugs which seriously damage the highways, except by written permission from the commissioners having jurisdiction over said highway or highways. Any person, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor and liable to a fine of not less than twenty-five dollars, nor in any event less than double the amount of damages which may have been caused to such highway or highways, as shall be estimated by the highway officials having jurisdiction over the highways which may be thus damaged. Id., Sec. 5. Added by Act 181 of 1917.

1797. Protection Against Fire from Traction Engines.—No traction or other portable steam engine shall hereafter be operated upon the premises of any inhabitant of this State, or upon the highway, unless said engine shall be equipped with an efficient spark arrester at all times when in use and using wood as a fuel. All traction or other portable engines using wood for fuel shall be equipped with bonnet spark arresters having an oval top of number ten mesh, twenty-two gage wire, and sides composed of number six mesh, sixteen gage wire. Every traction or other portable engine shall at all times carry and be equipped with proper fire extinguishers, either liquid or dry. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court. Act 339 of 1913. § § 7368 and 7369.

CHAPTER XXIV.

OTHER STATUTES RELATING TO HIGHWAYS.

The Covert Highway Law.

1798. Additional Method for Constructing Highways.—Act 59 of 1915, as amended by Act 125 of 1917, for the construction, improvement and maintenance of highways, is intended to provide an additional method for constructing and improving public highways, and to be in force where a portion of the cost of constructing or improving highways is paid by special assessment upon lands benefited thereby; and any highway not included within the corporate limits of any city in this State (including streets in villages), may be constructed or improved under its provisions. Highway construction and improvements under this act are directed by the county road commissioners. See Act 125 of 1917, Sections 1, 2 and 3.

1799. Jurisdiction of Highways under Covert Act.—Whenever any highway shall be improved in counties not under the county road system, such highways shall be and remain under the jurisdiction of the several townships in which such highway improvement is situate: Provided, That nothing herein contained shall authorize any township to interfere with the work of improving, maintaining or repairing such highway under the provisions of this act. § 4709, as Am. by Act 125 of 1917, Sec. 39.

All highways improved under the provisions of this act by the county road commissioners, or by the state highway commissioner, where more than one county is affected, that are parts of county roads, shall be and remain under the jurisdiction of the county road commissioners of the county in which such highway is situate. Any township road improved hereunder shall be and remain subject to the jurisdiction or authority of the proper township officials after such improvement: Provided, however, That in all cases, the jurisdiction of the county and township officials shall be subject to the right to make proper repairs out of the maintenance fund, if any, hereinbefore provided for. In any highways improved along a county line, jurisdiction over the portion improved

shall remain the same as though no improvement had been made upon such highway. § 4710, as Am. by Act 125 of 1917, Sec. 40.

1800. **Township May Appeal from Assessments Made Under Covert Act.**—The county at large, or any township at large assessed a per cent for any benefit for the improvement of any highway by the county road commissioners, or by the state highway commissioner may within ten days after the final hearing of the review heretofore provided for, appeal therefrom, and for such purpose make an application to the probate court of the proper county for the appointment of a board of review, as hereinafter provided. Townships shall appear by their respective supervisors; and counties shall appear by their clerk and prosecuting attorney. The supervisor shall act upon the direction of his township board. The clerk and prosecuting attorney shall act upon the direction of their board of supervisors, or of a committee of that board to whom may have been referred by the whole board, questions pertaining to the highway improvements. Only one application for a board of review shall be entertained by the probate court to review any special assessment. § 4711, as Am. by Act. 125 of 1917, Sec. 41.

Proceedings on appeal are provided for in Sections 42, *et seq.*, of Act 125 of 1917.

The County Road Act of 1917.

1801. **Houghton, Kent, Saginaw and Wayne Counties.**—Act 305 of 1917, "to establish a county road system in the various counties of this State, to provide for the construction of county roads therein, to provide the money therefor, to create and establish a county highway department therein," applies only to counties having a population of 85,000 or upwards, and which shall hereafter adopt the same. Those counties having a population of 85,000 or upwards as shown by the last federal census, are Houghton, Kent, Saginaw and Wayne. This act shall not be deemed to repeal or, in any manner, affect the county road law, chapter four of Act 283 of 1909 (Sections 1527 to 1557 of this Guide).

Federal Aided Roads.

1802. **Townships May Raise Funds.**—Townships, good roads districts and counties are hereby authorized to raise funds, either by general taxation or bond issues, for the building of federal aided roads and to deposit their portion of the cost of such roads with the state treasurer to be credited to the specific federal aid road project for which the money has been appropriated, which funds shall be paid out by the state highway commissioner together with funds appropriated by the State as the work of construction proceeds. Taxes for such purpose may be authorized, spread and collected, and bonds may be issued and sold, in the same manner, and subject to the same limitations and restrictions, as is or may be provided, in Act 283 of 1909 (the General Highway Law), as amended: Provided, however, That in no case shall the furnishing of estimates, plans or specifications by the board of county road commissioners for the construction, maintenance or improvement of a highway hereunder be regarded as necessary: Provided further, That the state highway commissioner shall upon written request by a board of supervisors or by a township board, or at his own option, fur-

nish estimates, plans and specifications for any such improvement. Act 99 of 1917, Sec. 2.

1803. **Proceedings Legalized.**—All proceedings heretofore taken in any township, good roads district or county of the State for the purpose of raising money by taxation or by loan for the construction, maintenance or improvement of federal aided roads in accordance with the provisions of this act, are hereby declared to be as legal and valid as though the same were taken subsequent to the time that this measure becomes operative; and any and all bonds heretofore issued for such purpose and in accordance with this act shall be deemed to be valid subsisting obligations of the township, good roads district or county, as the case may be, as though authorized, issued and sold hereunder. Any and all moneys so raised and in the possession of the township, district or county shall be deposited by the officials having control thereof with the state treasurer as herein provided. Id., Sec. 4.

1804. **Three Per Cent Annual Tax.**—Township, good roads districts and counties in which federal aided roads shall be built are hereby required to levy annually and raise by general taxation a sum equal to three per cent of the amount which said township, good roads district or county may have contributed toward the cost of building said federal aided roads, up to but not exceeding one hundred dollars a mile per year. It shall be the duty of the township board, in case such road is a township road, and said board is hereby authorized, to order such amount to be raised. Id., Sec. 5.

1805. **Township May Contract with State Commissioner.**—Any township, good roads district or county which has raised funds for building roads under the provisions of this act, may contract with the state highway commissioner at a price below that of the lowest responsible bidder and build or maintain the roads within its jurisdiction under the supervision of the state highway commissioner providing no satisfactory bid is received for building or maintaining the roads and all other bids are rejected. Id., Sec. 6.

Lighting Highways in Unincorporated Villages.

1806. **Township Board May Provide for.**—The township board of any township in which there is situated an unincorporated village may by a majority vote of such board at any regular meeting or any special meeting called for that purpose, provide for the lighting by artificial means of any of the highways in such village and the expense of such lighting shall be paid out of the highway improvement fund: Provided, That there shall be not more than the sum of two hundred fifty dollars spent in any one year for the purpose herein provided for: Provided also, That where such unincorporated village is situated in two or more townships, such provision shall be made by a majority vote of all the township boards in which such village shall be situated at a joint meeting of such township boards held for that purpose and the proportion of such expense to be paid by each of such townships shall be determined at such joint meeting. Act 264 of 1917, Sec. 1.

1807. **Highway Commissioner to Have Supervision.**—When provision for lighting such unincorporated village shall have been made in accordance with section one of this act, it shall be the duty of the highway

commissioner of such township to have general supervision over the installing and maintenance of such lighting system under the direction of the township board: Provided, That where such village shall be situated in two or more townships it shall be determined at the joint meeting of such township boards which one of the township highway commissioners shall have such supervision. Id., Sec. 2.

Employment of Prisoners and Convicts on Highways.

1808. Jail Prisoners.—The board of supervisors of any county in this State may, by resolution passed at any regular or special session, order that any or all male prisoners over the age of eighteen years under a sentence of imprisonment in the county jail, capable of performing manual labor, shall be required to work upon the public highways, streets, alleys and public roads, or in any quarry, pit or yard in the preparation or construction of materials for such public highways, streets, alleys or roads in any township, city or village in such county, or to perform any other lawful labor for the benefit of the county. Whenever any such resolution shall be passed, it shall be the duty of the sheriff to cause such prisoners to be put at work in such manner as may be provided in the resolution of the board of supervisors. The commissioner of highways of any township and the village or city authorities of any village or city in the county or the authorities in charge of any county institution may make application to have such prisoners work in any township, city, village or institution in such manner as shall be prescribed by the board of supervisors, and the said board shall have the right to determine in what township, city or village such prisoners shall work. § 2531.

PRISON CONVICTS: Act 181 of 1911 (§ § 1814-1816, C. L. of 1915) provides for employing upon the public highways certain prison convicts, upon the written request of the road commissioners in a township or district under the township or district road system.

1809. Highway Commissioner to Direct Work.—All work performed by any such prisoners shall be performed under the direction of the highway commissioner of the township. All such prisoners while engaged in such work shall be under the control and custody of the sheriff. All tools necessary for use by such prisoners and all materials upon which work is to be performed shall be furnished by the township, city, village or institution in which the work is done. § 2532.

CHAPTER XXV.

STATUTE LABOR.

[This part includes Chapter XXV, which was added to the General Highway Law (Act 283 of 1909) by Act 266 of 1913. Section 54 provides that this act (i. e., Chapter XXV,), permitting the return to the former system of statute labor, shall not become operative in any township until the same is approved by a majority of the qualified voters of the township in the manner provided. The manner of the adoption by referendum of the provisions of said Chapter XXV is prescribed in Sections 54-58 of that chapter, being § § 4665-4669, C. L. of 1915. See Sections 1863 to 1867, inclusive, of this Guide.]

1810. Election of Overseers.—At the annual meeting of each township electing to come under the provisions of this act there shall be elected annually at such meeting to be chosen viva voce, or in such other manner as the meeting may direct, one overseer of highways for each road district, and no elector except a resident in the district where the overseer is chosen or an elector of the township having taxable property in such district, shall vote for said overseer. Act 283 of 1909, Chap. XXV, Sec. 1. § 4612.

1811. Acceptance or Declination of Office.—Each overseer of highways elected at such meeting shall, within ten days after notice of his election, file with the township clerk a notice in writing of his acceptance, and in default thereof he shall be deemed to have refused to serve, and if any person elected to the office of overseer of highways and not exempted by law from holding such office, shall refuse to serve, he shall forfeit and pay the sum of ten dollars, unless the person selected shall file with the clerk of his township, within said ten days, a written notice stating that he declines accepting the office. Id., Chap. XXV, Sec. 2. § 4613.

1812. Highway Commissioner May Establish, Alter or Consolidate Road Districts.—The highways in this State, except as otherwise provided by law, shall be opened, improved and maintained by the labor of the inhabitants residing in and by assessments upon the property situated within the several townships; and for the more convenient expenditure of such labor and for making such assessments, the commissioner of highways in each township shall divide his township, excluding incorporated villages, into so many road districts as he may judge convenient, and may vacate, alter, divide, or consolidate such districts, his action in all such cases to be entered of record in the township clerk's office, but no such division shall be made within five days next preceding the annual township meeting: Provided, That when a period of fifteen years or more shall have elapsed after the organization of any township, or after any township shall have adopted the provisions of this chapter, the power of the commissioner of such township to vacate, alter, divide, or consolidate road districts shall be exercised only with the sanction and approval of the township board. All road districts as at present established shall remain and continue until changed pursuant to the provisions of this act. Id., Chap. XXV, Sec. 3. § 4614.

1813. Annual Account of Commissioner.—The commissioner of highways in each township shall render to the township board at the annual meeting thereof in each year an account in writing, which shall be in addition to the report now required by law, as follows:

First, The highway labor assessed and performed in his township within the year;

Second, The amount paid for delinquencies and commutations, and other moneys received by him and the application thereof;

Third, The improvements which have been made on the roads and bridges in his township during the year preceding such report and the condition of such roads and bridges;

Fourth, An estimate of the amount of highway labor which, in his judgment, shall be assessed upon the taxable property of the township

for the next ensuing year, not exceeding one day's labor upon each one hundred dollars valuation for the year:

Fifth, The improvements necessary to be made on the highways and bridges during the year, and the amount of money tax that should be levied for that purpose beyond what such estimated highway labor will accomplish, not exceeding fifty cents upon each one hundred dollars of valuation according to the assessment roll for the last preceding year, or in townships whose aggregate valuation is less than fifty thousand dollars, a gross sum not exceeding two hundred fifty dollars. Id., Chap. XXV, Sec. 4. § 4615. [See Form No. 119.]

1814. Town Meeting to Determine Amount of Highway Labor and Money Tax.—The township board shall cause such statement to be presented at the then next annual township meeting, and such meeting immediately after the election of overseers of highways, may determine, by a majority of the electors present and voting:

First, Upon the amount of highway labor to be assessed, which shall be within the limit named in the fourth subdivision of the last preceding section;

Second, Upon the amount of money taxed to be assessed, within the limit prescribed by the fifth subdivision of the last preceding section, and the sum so voted shall be levied and collected in the same manner as other township expenses: Provided, That if the statement required by this and the last preceding section be not presented to the annual township meeting, such meeting may vote on the amount of highway labor and money tax to be assessed, within the limits contemplated by said section, and action thereon shall be as valid for all purposes as if such statement had been presented. Id., Chap. XXV, Sec. 5. § 4616.

1815. When Electors Neglect or Refuse.—In case the electors present at any annual township meeting shall neglect or refuse to vote any rate of highway labor to be assessed, as by the first subdivision of the last preceding section provided, the commissioner, in making his assessment, may assess not exceeding one-half day's labor upon each one hundred dollars of valuation; and in case such electors shall neglect or refuse to vote a money tax, as by the second subdivision of the preceding section provided, the township board may order to be levied such sum, within the limit hereinabove provided, as such board may deem necessary for the improvement of roads and bridges. Id., Chap. XXV, Sec. 6. § 4617.

1816. Supervisor to Make Assessment Lists.—The supervisor shall, within two days after the completion of the assessment roll by the board of review in each year, make the assessment lists for highway labor, for the several road districts in his township as provided in sections eight and nine of this chapter. If deemed necessary he may make duplicate copies of said lists and file one copy of each with the township clerk. Id., Chap. XXV, Sec. 7. § 4618.

1817. What Lists Shall Show.—The supervisor shall make out from such assessment roll a separate list for each road district, showing the name of each person assessed therein on account of personal property, and the amount so assessed against each such person, and a description of each lot or parcel of land within each district, with the valuation thereof, and the name of the person against whom the same is assessed.

if the same be known, inserting in a separate part of such list descriptions of lands owned by non-residents of the township, with the value of each lot or parcel set down opposite each such description, as the same shall appear on the assessment roll, and if any lot or tract be not separately described in such roll, the value thereof shall be computed in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part. Id., Chap. XXV, Sec. 8. § 4619.

1818. Apportionment of Highway Labor.—The highway labor to be assessed in any road district shall be apportioned by the commissioner, and assessed upon the estate, real and personal, of every inhabitant thereof, and upon each tract or parcel of land therein of which the owners are non-residents, as the same may appear by the assessment roll. The supervisor shall carry out opposite each description of property on the list made by him, pursuant to the last preceding sections, the number of days which such property shall be assessed for highway tax, but where there are different descriptions of property following each other and assessed to the same person, the number of days may be carried out in gross. Id., Chap. XXV, Sec. 9. § 4620.

1819. Disposition of Road Lists.—When the supervisor shall complete the several road lists as provided in section seven, the same shall be forthwith delivered by him to the commissioner, and shall be forthwith delivered by the commissioner to the overseer of highways of the proper district, with his warrant as commissioner annexed thereto, commanding the overseer of highways to warn the persons therein assessd to work on the higways, and to make return of his doings in the premises to such commissioner as the law directs. No omission to enter or assess property for highway labor upon such lists, or other error or defect in such lists or in the warrants attached thereto, shall in any way affect or invalidate the assessment of property in the township assessment roll prepared by the supervisor. Id., Chap. XXV, Sec. 10. § 4621.

1820. Omitted Names to be Added to Lists.—The names of persons left out of any such list, and who ought to have been included therein, and of new inhabitants who have not, in the same year, been assessed in some other place for highway labor, shall be, from time to time, added to the several lists, and rated by the overseers in proportion to their taxable real and personal property, as other persons are rated on such lists, by the supervisor, subject to an appeal to the supervisor. Id., Chap. XXV, Sec. 11. § 4622.

1821. Commissioner to Certify Labor Assessment Rate to Supervisor.—The commissioner of highways shall, during the month of April, and within five days after he shall have been elected and qualified, certify to the supervisor the rate assessed by him for highway labor, in case the annual township meeting has failed to take any action in fixing said rate. In case the rate of assessment for highway labor has been fixed by the annual township meeting, the same shall be certified to the supervisor by the township clerk within the time above limited. Id., Chap. XXV, Sec. 12. § 4623.

1822. Private Roads.—It shall be the duty of the commissioner to credit such persons as live on private roads in his township, and work

the same, so much upon their assessment on account of such work as he may deem necessary to improve and keep such private roads in repair; or he may annex any such private road to some highway district. Id., Chap. XXV, Sec. 13. § 4624.

1823. When Occupant Not Owner is Assessed.—Whenever the occupant of any land not owned by him shall be assessed therefor, the owner thereof shall not be assessed, during the same year, to work on the highways on account of such land; and in such case the commissioner shall distinguish in his assessment list the amount charged upon such land from the personal tax, if any, of such occupant. Id., Chap. XXV, Sec. 14. § 4625.

1824. Tenant and Landlord; Deductions.—Whenever any tenant of any land for a term of five years or less shall be assessed to work on the highways on account of such land, and shall actually perform such work, or commute therefor, he shall be entitled to a deduction from the rent due or to become due from him for such land, equal to the full amount of such assessment, or he may recover the same of his landlord in an action for money paid for his benefit, estimating the same at so much as is or shall be prescribed by law for commutation per day for highway labor, unless otherwise provided by agreement between such tenant and his landlord. Id., Chap. XXV, Sec. 15. § 4626.

1825. Duties of Commissioner and Overseers.—The commissioner of highways in each township shall have the general care and superintendence of highways therein. The overseer of highways in each road district shall see that the highways are kept in repair, and shall see to the performance of highway labor within his district, subject to the provisions of sections twenty-seven, twenty-eight and twenty-nine of this chapter, but upon complaint in writing to the commissioner by any three or more resident taxpayers of any district that the labor is being unequally and unjustly applied, or improperly done, the commissioner shall direct as to the application of such labor or the manner of performing the same. Id., Chap. XXV, Sec. 16. § 4627.

1826. Labor to be Done by August 1.—Every overseer shall cause the highway labor assessed within his district against persons residing in his township, or represented therein by an agent, to be collected either by labor or commutation, before the first day of August in each year, subject to the provisions of sections twelve and thirteen of this chapter; but he may, in his discretion, reserve not to exceed one-eighth of the amount, to be applied for the purpose of repairs at a later period. And it shall be the duty of every overseer of highways, who is charged by law with supervising the performance of highway labor within his district, to see to it, and require that all gravel or dirt scraped or dumped upon the track of any highway in his district be promptly leveled and smoothed so as to make the same as safe and passable as the condition of the weather and material will permit. Every overseer of highways who shall violate the provisions of this act, or who shall wilfully neglect to perform the duties enjoined upon him by this act, shall, upon conviction thereof, be punished by a fine not exceeding twenty-five dollars, or be imprisoned in the county jail not more than thirty days, or by both such fine and imprisonment, in the discretion of the court. Id., Chap. XXV, Sec. 17, § 4628.

1827. Overseer to Give Notice to Persons Assessed.—It shall be the duty of the overseer to give at least twenty-four hours' notice to all persons assessed to work on the highways in his district, and residing in his township, of the time when, and the place where, they are to appear for that purpose, and with what implements, and he shall notify the owner or agent of any non-resident lands within his district, if he shall know that any such owner or agent resides within the township, of the number of days assessed upon such lands, and of the time when and place where the labor is to be performed, which notice shall be given at least five days previous to the time appointed. Id., Chap. XXV, Sec. 18. § 4629.

1828. Persons Assessed Shall Work or Commute.—Every person liable to work on the highways shall work the whole number of days for which he shall have been assessed, unless he shall elect to commute for the same, or some part thereof, and shall within the time in which he is required to appear and work, pay the commutation money, at the rate of one dollar fifty cents for each day assessed, to the overseer of the district on which the labor is required to be performed, and the commutation shall not be considered as complete until such money be paid. All moneys so paid shall be expended by the overseer so far as may be necessary, in the purchase of implements, or construction and repair of the roads and bridges in the same district, but no overseer shall be allowed to commute for any portion of the time for which he is assessed, unless his tax shall exceed the number of days necessary for the faithful and efficient supervision by him of the highway work within his district, in which case he may commute for the excess: Provided, That in no case shall said overseer expend more than fifteen dollars in any one year for implements. Id., Chap. XXV, Sec. 19. § 4630.

1829. Penalty for Neglect or Refusal.—Every person assessed to work on the highways who has been duly notified, who shall not commute, and who shall refuse or neglect without good cause, to appear in obedience to such notice, shall, for every day's refusal, pay the sum of one dollar and fifty cents; and if such person was lawfully required to furnish a team, man or implements, and shall refuse or neglect without good cause to comply, he shall pay as follows:

First, For wholly refusing to comply with such requisition, three dollars fifty cents for each day;

Second, For omitting to furnish a cart, wagon, plow or scraper, one dollar twenty-five cents for each day;

Third, For omitting to furnish a yoke of oxen or span of horses, one dollar fifty cents for each day;

Fourth, For omitting to furnish a man to manage the same, one dollar fifty cents for each day. Id., Chap. XXV, Sec. 20. § 4631.

1830. Penalties May be Collected by Suit.—When any person shall become liable for the payment of any sum of money under the last preceding section, the overseer may at any time after six days commence suit in his official character before any justice of the peace of the township, or of an adjoining township in the same county, against the person so liable, for the recovery of the sum due. Such suit shall be by summons in an action of assumpsit or on the case, and the declaration shall be for

money had and received, and such action shall be prosecuted, and collection under it may be had in all respects as is provided in case of suits between private persons, except that adjournments shall not be for a longer time than ten days in all; and when judgment is obtained, execution may issue immediately, and no stay of execution shall be allowed. Id., Chap. XXV, Sec. 21. § 4632.

1831. **Penalties Collected to be Set Off Against Assessment.**—Every sum of money collected for a refusal or neglect to appear and work on the highways shall be set off against the assessment upon which it was founded, estimating every one dollar fifty cents collected, exclusive of the costs of the proceedings, as a satisfaction for one day's work. Id., Chap. XXV, Sec. 22. § 4633.

1832. **Implements May be Required to be Furnished.**—Every overseer shall have power to require a cart, wagon, plow, scraper or road machine, with a yoke of oxen or span of horses or more than one yoke of oxen or span of horses if needed to properly do the required work, and a man or men to manage them, to be furnished by any person having the same within his district, who shall have been assessed and shall be liable for highway labor for three days or more, and each implement named in this section, team or man furnished, pursuant to such requisition, shall be deemed equivalent to one day's labor: Provided, That any person who shall, under the provisions of this section, be required to furnish a road machine, may receive additional compensation therefor, not to exceed six dollars per day for one machine with man and team to manage the same. Id., Chap. XXV, Sec. 23. § 4634.

1833. **May Work in Person or by Substitute.**—Every person assessed to work on the highways, and warned to work thereon, may appear and work in person or by a substitute, and the person so appearing shall actually work eight hours in each day. If any person assessed, or his substitute, shall after appearing, remain idle, or not work faithfully, or hinder others from working, such offender shall, for each offense, pay the sum of one dollar. Id., Chap. XXV, Sec. 24. § 4635.

1834. **Acceptance of Excuse Does Not Exempt.**—The acceptance by an overseer of an excuse for a refusal or neglect shall not in any case exempt the person excused from commuting for or working the whole number of days for which he shall have been assessed during the year. Id., Chap. XXV, Sec. 25. § 4636.

1835. **Removal of Obstructions; Repair of Culverts and Bridges.**—If at any time after the rendering of the annual account required by overseers, and before the township meeting following next thereafter, it shall be necessary to remove obstructions from the highway, or to repair culverts or bridges injured by freshets or otherwise, or to protect the highway or any such culverts or bridges from injury, in any road district, the proper overseer shall have power to call out any persons in this district liable to pay highway tax, to assist in the work necessary therefor, and he shall give such persons a written certificate, stating the number of days worked by each, which shall be allowed to them on the next year's highway tax; but no person shall be thus called upon for labor to exceed the amount of one-half his tax the previous year. Id., Chap. XXV, Sec. 26. § 4637.

1836. Permanent Improvements.—All road work hereafter done upon roads that have been opened and worked for ten years or more, except such as may be required for necessary repairs, shall have in view the permanent improvement of such roads by graveling and turnpiking. Elevations upon the line of such roads shall be cut down and the depressions raised in order to form a grade as level as the nature of the ground will permit. Any surplus earth or gravel taken from one portion of the road may, with the consent of the highway commissioner, be used to fill such depressions in any other road in the same district: Provided, That no earth shall be dug, plowed or scraped nearer than within eight feet of the margin of the highway without the consent of the owner of the premises adjacent thereto. Such roads shall be worked so as to form a turnpike sufficiently crowning to turn the water, with gutters adequate for drainage, and the width of the turnpike shall be not less than ten feet on each side of the center line of the road, terminating in the center of the gutter. Any person may, under the direction of the overseer of highways, be allowed to remove snow from the traveled highway, to haul gravel or other material for the repair of roads at any time during the year, and a receipt for the work so done shall apply on his next assessment of highway labor. Id., Chap. XXV, Sec. 27. § 4638.

1837. When Turnpike to be Graveled.—After any such turnpike shall have been used for one year, the ruts may be filled, after which it shall be graveled or shaled, in cases where gravel or shale can be conveniently obtained. In graveling or shaling any road, the gravel or shale shall be placed along the center thereof in a space not less than eight feet in width and in a mass not less than six inches deep, if gravel, and not less than ten inches deep, if shale, or not to exceed fifteen inches, in the discretion of the commissioner. The highway labor in any district necessary for such graveling or shaling shall be done at such time as the overseer may direct, not later than the first day of September in the year in which the same is assessed, but the commissioner may allow any person assessable within any district to work out a portion of his tax for the next year in graveling or shaling any road in such district at a later time than the first day of September, in case the road bed be dry and in fit condition therefor, and such person shall have credit on his next year's tax for such work: Provided, That no turnpiking shall be done after the first day of August in any year. Id., Chap. XXV, Sec. 28. § 4639.

1838. Continuation and Uniformity of Work.—The work mentioned in the two last preceding sections shall be continued until all the roads of the townships are made at least equal to the requirements of said sections. The commissioner shall determine what roads shall be from time to time improved as required by said sections, subject to any direction that the township board may see fit to exercise. The commissioner shall direct the overseers in the expenditure of the highway labor within their districts, so that in improving any line of road extending into or through different districts, uniformity in the work of improvement may be had. Before proceeding to the improvement of any road as above provided, whether by highway labor or by contract, the commissioner shall establish the grade of such work, and shall set grade stakes not more than six rods apart along the side of the highway to be worked, to which the grade shall conform. Id., Chap. XXV, Sec. 29. § 4640.

1839. Commissioner May Authorize Improvements.—The commissioner of highways of any township, upon the written petition of not less than three persons, taxpayers in the township, and liable for road tax on the road proposed to be improved, may authorize the improvement of all or any portion of road described in said petition, said road to be situate within the township. The commissioner of highways of the township in which such road is situated shall furnish a grade for such road and direct the manner in which such road shall be graded: Provided, That it shall not be graded less than sixteen feet wide, nor graveled more than twelve feet wide. He shall also designate the time in which said road shall be completed. Upon the satisfactory completion of said road, the commissioner of highways shall make an estimate of the work done by each party working on said road, as provided under the general road law, and shall issue certificates therefor, stating the number of days of work done, stating when authority was granted to improve such road, and when the same was completed in his township, and accepted by him. In case of dispute between the commissioner of highways and any person interested in such improvement as to the manner of making the same or the value of the work, the matter in dispute shall be submitted to the supervisor of the township, and his decision shall be final. Id., Chap. XXV, Sec. 30. § 4641.

1840. Credit Given Certificates.—The holder of such certificates shall be entitled to have credit therefor, to the full amount of his certificate or certificates, on any road tax payable in labor, that may be levied on the property of such person, situated within the township, after the completion of such improvement. If such road tax levied in any one year on such property is not sufficient to cover the amount of the certificate or certificates, the same shall in like manner be credited from year to year, not to exceed three, until the certificate or certificates are fully paid, without interest. At the time of making such credit on the certificate the commissioner of highways shall issue and deliver to the holder thereof a receipt for the road tax charged against such person for the current year, and the holder of the certificate may transfer the same, or any balance due thereon, to any subsequent purchaser of the property owned by him when the certificate was issued. Id., Chap. XXV, Sec. 31. § 4642.

1841. Procuring of Materials.—The highway commissioners, at the time of authorizing such improvement, shall direct in their orders at what point the materials therefor shall be taken, by virtue of the provisions of the general laws in force for procuring materials for the improvement of public roads, which point shall be the nearest and most convenient place where the materials can be procured in the township. Id., Chap. XXV, Sec. 32. § 4643.

1842. Forfeiture for Neglect by Commissioner or Overseer.—Any commissioner or overseer of highways, having accepted such office, shall, for every neglect of the duties thereof, forfeit the sum of ten dollars. Id., Chap. XXV, Sec. 33. § 4644.

1843. Commissioner or Overseer May be Prosecuted.—Any commissioner or overseer may be prosecuted by information or indictment for any deficiency in the highways occasioned or continued by his fault or neglect; and on conviction thereof may be fined in any sum not exceeding fifty dollars. Id., Chap. XXV, Sec. 34. § 4645.

1844. When Commissioner to Prosecute Overseer.—It shall be the duty of the commissioner, whenever any competent resident of his township shall make complaint in writing that any overseer in such township has refused or neglected to perform any of the duties required of him by law, and shall give or offer to such commissioner sufficient security to indemnify him against the costs which may be incurred in prosecuting for the penalty annexed to such refusal or neglect, forthwith to prosecute such overseer in the name of the people of this State for the recovery of such penalty. Id., Chap. XXV, Sec. 35. § 4646.

1845. Penalty for Not Warning Residents.—If any overseer shall neglect or refuse to warn the residents of his district, liable to do work on the highways, to do such work as the law requires and his warrant directs, such overseer shall be liable to pay for all the work not so done or commuted for, at the rate per day fixed by law for highway labor; and it shall be the duty of the commissioner to bring suit therefor before any justice of the peace or any other court of competent jurisdiction, and to collect of such overseer what he may be liable to pay under the provisions of this section, unless such overseer shall show satisfactory cause to such justice or court why he should not pay the same. In all cases where judgment shall be recovered against any overseer under the provisions of this section, such overseer shall not be liable to any further action on account of such neglect or refusal. Id., Chap. XXV, Sec. 36. § 4647.

1846. Commissioner May Require Overseers to Give Bond.—The commissioner may require any one or all of the overseers of highways of his township, before entering upon the duties of their office, to give bond with one or more sufficient sureties in such sum as he may require and to be approved by him, conditioned for the faithful performance of the duties of their office, and the faithful disbursement of all moneys that may come into their hands by virtue of their office. The bonds mentioned in this section shall be filed with the township clerk, who shall safely keep the same in his office. Id., Chap. XXV, Sec. 37. § 4648.

1847. Commissioner to Appoint Overseers to Fill Vacancies.—If any person chosen to the office of overseer shall refuse to serve, or if his office shall become vacant, the commissioner shall, by warrant under his hand, appoint some other person in his stead; and in case any vacancy shall occur in the office of overseer, which the commissioner shall be unable to fill from any cause, it shall be his duty in like manner to designate some other overseer of the same township, to perform the duties of such vacated office, and the overseer so appointed or designated shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at township meetings. The commissioner making such appointment or designation shall cause such warrant to be filed in the office of the township clerk, who shall forthwith give notice thereof to the person so appointed or designated, who shall give written notice of his acceptance to such clerk within ten days after receiving such notice. Id., Chap. XXV, Sec. 38. § 4649.

1848. Overseers' Returns Deposited by Commissioner with Supervisor.—The commissioner shall, between the first and fifteenth days of November in each year, call upon each overseer of his township for the purpose of procuring the returns mentioned in section forty-five of this

chapter (section 1854 of this Guide), and shall on or before the twentieth day of November, deposit the returns mentioned in the sixth subdivision of said section with the supervisor of his township, whose duty it shall be to cause the amount of all arrearages of labor, estimating the same at one dollar fifty cents for each day to be levied on any lands or other taxable property owned by the persons in arrears, collected in the same manner that the contingent charges of the township are collected, and the same when collected shall be paid into the township treasury, and credited to the district in which the same accrued. Id., Chap. XXV, Sec. 39. § 4650.

1849. Village Streets to be Assigned to Road District.—The commissioner shall assign to some road district such streets of recorded but unincorporated village plats as may be situated in his township, and as he shall deem to be required for public highways, and the same shall be subject to the care and superintendence of the overseer, in like manner as other highways. Id., Chap. XXV, Sec. 40. § 4651.

1850. Noxious Weeds.—Every overseer shall cause the noxious weeds within the limits of the highways within his district to be cut down and destroyed twice in each year, once before the first day of July and again before the first day of September, and the requisite labor shall be considered highway work; and once in every month from the first day of April to the first day of December, shall cause all the loose stones lying on the beaten track of every road within his district to be removed. Any overseer who shall refuse or neglect to perform the duties required by this section shall be liable to a penalty of twenty-five dollars. Id., Chap. XXV, Sec. 41. § 4652.

1851. Overseer May Procure Scraper and Plow.—Any overseer may procure a good and sufficient iron or steel shod scraper and a suitable plow, or either of them, for the use of his road district, to be paid for with moneys arising from commutations, delinquencies, or non-resident highway taxes within such district. Id., Chap. XXV, Sec. 42. § 4653.

1852. Overseer to be Paid for Excess Work.—If any overseer shall be employed more days in executing the several duties enjoined upon him by this act than he is assessed to work on the highways, he shall be paid for the excess at the rate of one dollar fifty cents per day, and be allowed to retain the same out of any moneys that may come into his hands for delinquencies or commutations, or shall be paid out of the road and bridge fund in his road district. Id., Chap. XXV, Sec. 43. § 4654.

1853. Overseer's List of Persons Liable to Work.—Each overseer shall, within sixteen days after his election, or appointment, deliver to the township clerk a list subscribed by him, of the names of all the inhabitants in his road district who are liable to work on the highways. Id., Chap. XXV, Sec. 44. § 4655.

1854. Overseer's Annual Account to Commissioner.—Every overseer shall, between the first and fifteenth days of November in each year, render to the commissioner an account in writing, verified by oath, to be administered by the commissioner or some other person competent to administer oaths and containing:

First, The names of all persons assessed to work on the highways in his district:

Second, The names of all those who have actually worked on the highways, with the number of days they have so worked;

Third, The names of all those against whom judgments have been recovered by virtue of this act, and the sums so recovered;

Fourth, The names of all those who have commuted, and the amounts paid by them, and the manner in which the moneys arising from judgments and commutations have been expended by him;

Fifth, A list of all the non-resident lands in his district upon which labor has been performed or commuted for;

Sixth, A separate list, to be verified in like manner, of all the lands of non-residents and of persons unknown, which are taxed upon his list, on which the labor assessed has not been paid, and the amount unpaid; also a list of all lands and personal property assessed as resident for which the owner or occupant shall not have commuted, or shall have refused or neglected to work after being duty notified; and containing the further statement that he has given the notice required by section eighteen of this act, and that the labor assessed upon the lands and personal property so returned has not been performed, and remains unpaid. Id., Chap. XXV, Sec. 45. § 4656.

1855. Overseer to Pay Over Moneys Collected.—Every such overseer shall, immediately upon the rendering of such account, pay over to the township treasurer all moneys collected by him for judgments and commutations and remaining unexpended in his hands. But no error or omission of duty on the part of the overseer of highways shall invalidate the highway tax assessed by the supervisor on the township assessment roll. Id., Chap. XXV, Sec. 46. § 4657.

1856. Suit for Moneys Not Paid Over.—If any overseer shall neglect or refuse to pay over any moneys remaining unexpended in his hands, as is required by section forty-six of this act, it shall be the duty of the township treasurer forthwith to sue for the same in his name of office, in an action for money had and received to the use of such treasurer, which moneys, when collected, shall be applied as provided in the next section. Id., Chap. XXV, Sec. 47. § 4658.

1857. How Moneys to be Expended.—All moneys that may be collected pursuant to the last preceding section, or pursuant to section thirty-nine of this act, and all unexpended balances that may be paid to the township treasurer by overseers, shall be applied by the commissioner in the construction and improvement of roads and bridges in the road district for the benefit of which the labor was originally assessed. Id., Chap. XXV, Sec. 48. § 4659.

1858. Eligibility of Overseers.—No person shall be eligible to the office of overseer of highways who is not a resident taxpayer in the district for which he is elected or appointed, and no person shall hold the offices of commissioner and overseer at the same time. Id., Chap. XXV, Sec. 49. § 4660.

1859. Blanks for Road Lists.—It shall be the duty of the auditor general, at the time of transmitting blanks for the use of the supervisors in making out their assessments, to transmit blanks with proper headings for the use of the commissioners of highways in making lists of highway taxes. Such blanks shall also have printed thereon sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-

three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-six, forty-one, forty-two, forty-three, forty-four, forty-five and forty-six of this chapter. He shall also transmit blanks for the proper return of overseers mentioned in section forty-five of this chapter. Id., Chap. XXV, Sec. 50. § 4661.

1860. Words "Commissioner" and "Overseer" Defined.—The word "commissioner" wherever used in this act, except some special commissioner be mentioned, shall be construed to mean the commissioner of highways elected in and for each township, and wherever the word "overseer" is used, it shall be construed to mean the overseer of highways elected or appointed over and for each road district, and no exception shall be taken to the language of this act if in any place it fails to set forth specifically the intent and meaning herein defined. Id., Chap. XXV, Sec. 51. § 4662.

1861. Compensation of Commissioner.—The commissioner shall be entitled to the same per diem compensation for any services required of him by this act as is provided by law, which shall be audited and allowed by the township board and paid in the same manner as other township expenses. Id., Chap. XXV, Sec. 52. § 4663.

1862. Duties of Overseers and Commissioner.—Overseers of highways in all townships electing to come under the provisions of this act, shall, so far as the same are applicable, perform the duties imposed upon overseers of highways by Act 283 of 1909, and the commissioner of highways and any one of the overseers of highways in said townships who may be called upon, shall constitute and shall perform the duties imposed by law upon fence viewers. Id., Chap. XXV, Sec. 53. § 4664.

1863. This Chapter Operative When Approved by Voters.—This act shall not become operative in any township until the same is approved by a majority of the qualified voters thereof in the manner hereinafter provided. Id., Chap. XXV, Sec. 54. § 4665.

1864. Voters May Determine.—The qualified electors of any township of this State who do not reside in any incorporated village may, by a majority vote of those voting on said question, determine that the provisions of this act shall become operative, and shall supersede all the provisions of Act 283 of 1909 which conflict herewith, all the other provisions of said act to remain in full force and effect. Id., Chap. XXV, Sec. 55. § 4666.

1865. Submission of Question to Voters.—The township board of any township shall submit the question implied by the preceding section to the electors of such township, at any annual township meeting, or at any special township meeting held after the annual meeting and prior to the first day of October in any year, on the written demand of twelve or more freeholders of such township filed with the township clerk not less than twelve days before time of such meeting or election, and notice of such vote to be taken shall be given by the township clerk by publishing the same at least once in some newspaper, if any, published in the same county and of general circulation in said township, and by posting the same in at least three public places in the township at least ten days before the time of such meeting or election. The vote shall in all cases

be by ballot, and the ballot shall be in substantially the following form:

"Shall the Township of ..... adopt Chapter Twenty-five of the Highway Laws? Yes [ ].

"Shall the Township of ..... adopt Chapter Twenty-five of the Highway Laws? No [ ]."

and the ballots shall be deposited in a separate box and shall be canvassed and the result certified as in other cases. Id., Chap. XXV, Sec. 56. § 4667.

1866. Voters May Repeal.—Any township having adopted this act may in like manner, at any annual township election held thereafter upon the like petition and notice provided in section fifty-six, vote upon the question of repealing this act, and if a majority of those voting thereon shall vote in favor thereof, this act shall be repealed. The vote shall be by ballot and the ballot shall be in substantially the following form:

"Shall the Township of ..... repeal Chapter Twenty-five of the Highway Laws? Yes [ ].

"Shall the Township of ..... repeal Chapter Twenty-five of the Highway Laws? No [ ]."

and the ballots shall be deposited in a separate box and shall be canvassed and the result certified as in other cases. Id., Chap. XXV, Sec. 57. § 4668.

1867. When Effective After Adoption.—If this act is approved by a township, as provided in the preceding section, at a special election, the same shall not take effect until the first Monday of April thereafter. If approved at the annual township meeting, this act shall take immediate effect, and the township board shall decide upon the rate of statute labor to be assessed, and the highway commissioner shall appoint all overseers for that year, as in this act provided, in cases where the voters at the annual meeting fail to act. Id., Chap. XXV, Sec. 58. § 4669.

1868. Limitations of Act.—Nothing herein contained shall be in any way construed to limit the powers or jurisdiction of county road commissioners over county roads in counties which shall have heretofore, or may hereafter adopt the county road system, or to limit the powers and jurisdiction of the state highway commissioner over state reward roads. Id., Chap. XXV, Sec. 59. § 4670.

PART XVI

OVERSEERS OF HIGHWAYS.

CHAPTER I.—Election and Qualification.
CHAPTER II.—Duties in Townships Which Assess and Collect Highway Taxes.
CHAPTER III.—Duties as Fence Viewers.

CHAPTER I.

ELECTION AND QUALIFICATION OF OVERSEERS.

1869. Overseer to be Chosen for Each Road District.—There shall also be elected at such meeting (the annual township meeting) to be chosen viva voce, or in such manner as the meeting may direct, one overseer of highways for each road district, and no elector except a resident of the district where the overseer is chosen, or an elector of the township having taxable property in such district, shall vote for said overseer, and as many poundmasters as the meeting may direct: Provided, If there shall be but one road district in the township the overseer of highways for that district shall be elected by ballot in the same manner as other township officers are elected: Provided further, That the township board may, by resolution, direct that all overseers of highways in any township shall be elected, in their respective districts, by ballot in the same manner as other township officers are elected. § 4482. As Am. by Act 212 of 1917.

Wherever the word "overseer" is used, it shall be construed to mean the overseer of highways elected or appointed over and for each road district, and no exception shall be taken to the language of the law if in any place it fail to set forth specifically the intent and meaning herein defined. See Section 1451 of this Guide.

1870. Overseer Must be Resident Taxpayer of District.—No person shall be eligible to the office of overseer of highways who is not a resident taxpayer in the district for which he is elected or appointed, and no person shall hold the office of commissioner and overseer at the same time. § 4482. As Am. by Act 212 of 1917.

1871. When Overseer to File Acceptance; Penalty for Refusing to Serve.—Each overseer of highways and poundmaster elected at such township meeting shall, within ten days after notice of his election, file with the township clerk a notice in writing of his acceptance and in default thereof he shall be deemed to have refused to serve. If any person elected as overseer of highways, and not exempted by law from holding such office, shall refuse to serve, he shall be subject to a penalty of ten dollars, unless written notice of such refusal be filed with the township clerk within ten days. See Sec. 243 of this Guide.

1872. Term of Office of Overseers.—The overseer shall hold his office for the term of one year and until his successor shall be elected and qualified. See section 251 of this Guide.

1873. Bond of Overseer.—The commissioner may require any one or all of the overseers of highways of his township, before entering upon the duties of their office, to give bond with one or more sufficient sureties in such sum as he may require and to be approved by him, conditioned for the faithful performance of the duties of their office, and the faithful disbursement of all moneys that may come into their hands by virtue of their office. The bonds mentioned in this section shall be filed with the township clerk, who shall safely keep the same in his office. § 4471. [See Form No. 95.]

As to justification of sureties on official bonds, the execution of bonds by surety companies, etc., see Sections 244 to 248 of this Guide.

1874. Appointment of Overseer to Fill Vacancy.—If any person chosen to the office of overseer shall refuse to serve, or if his office shall become vacant, the commissioner shall, by warrant under his hand, appoint some other person in his stead; and the overseer so appointed or designated shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at township meetings. The commissioner making such appointment or designation shall cause such warrant to be filed in the office of the township clerk, who shall forthwith give notice thereof to the person so appointed or designated, who shall give written notice of his acceptance to such clerk within ten days after receiving such notice. § 4472. [See Form No. 120.]

CHAPTER II.

DUTIES OF OVERSEERS IN TOWNSHIPS ASSESSING AND COLLECTING ROAD REPAIR HIGHWAY IMPROVEMENT TAXES.*

1875. Repair Tax Expended or Worked in District Where Assessed.—The commissioner, acting with the township board, may divide the township into one or more road districts in each surveyed township, in each of which districts an overseer of highways shall be elected, and the repair tax shall be expended or worked in the road district where assessed. § 4326.

1876. Overseer in Unincorporated Village District.—The commissioner and township board of any township in which may be located an unincorporated village, or in the event that such unincorporated village is located in more than one township, the commissioners and township boards of the townships to be affected thereby, may create of the territory embraced by such unincorporated village a separate road district, for which road district there shall be elected an overseer in the same manner as other overseers are elected in the township. And in case such unincorporated village is located in more than one township the overseer of each township shall have supervision over that territory embraced in such unincorporated village as may be located in his township. Such overseers shall from time to time report to the commissioner any defects in the highways within their respective districts, and shall, when required by the commissioner, supervise the working and repairing of roads, and the building and repairing of roads, and the building and repairing of

*The provisions of law prescribing the duties of overseers of highways in townships which have returned to the system of statute labor, are compiled in Chapter XXV of Part XV. See Sections 1810, *et seq.*, of this Guide.

bridges therein. The overseer or overseers of any road district comprised of an unincorporated village as in this section provided, may, upon the written application of a majority of the taxpayers residing therein, authorize not less than one-fourth and such additional part of the road repair tax assessed therein, and not necessary for the repairs of highways therein, and not necessary for the direction of the overseer or overseers of such district in the construction, repairs and improvements of sidewalks within the limits of such unincorporated village; and for such purpose said overseer or overseers, when such unincorporated village may be located in more than one county, may also from time to time, by writing signed by him or them and filed with the clerk of such township or townships, authorize such additional portion of the repair tax of such village as in his or their judgment is not needed for the annual repair of the highways therein, to be anticipated for one or more years, not exceeding three, and thereupon any person or corporation, resident of or owning property within such village, and assessed for highway repair tax in the district within which such district is situated, may, in the year so designated in such order, anticipate his, her or its assessment for road repair tax for such time as he, she or it may see fit within the limits so prescribed by the overseer of that part of the road district in which such repairs shall be made, and it shall be the duty of such overseer to give to such person or corporation a certificate signed by him, showing the amount of road repair tax paid by such person or corporation; and in each succeeding year, upon presentation of such certificate, such person or corporation shall be allowed and credited by the overseer of highways of that part of the district in which such repairs or the construction of sidewalks shall have been made, with the payment of the road repair tax so assessed to him, her or it for such year, until such credit shall equal the amount of the road repair tax so stated in said certificate to have been anticipated, and such overseer shall endorse thereon a statement signed by him showing such credit or allowance. § 4326.

1877. **Overseers to Have Charge of Road Work and Repair of Highways and Bridges.**—The supervision of road work and the repair of highways and bridges shall be under the charge of the overseers, subject to such directory control of the township board and highway commissioner as is herein prescribed. Upon complaint in writing to the township board by any ten or more resident taxpayers that the road repair fund is being unequally and unjustly applied, or work improperly performed, the township board may direct the expenditures of such road repair fund or the manner of performing such work. § 4326. See also Secs. 1875 and 1876 of this Guide.

1878. **Persons Assessed Given Preference.**—In the performance of all road repair work those assessed for highway taxes in each respective district where such work is to be done, shall be given preference in the performance of such work. § 4329.

1879. **Road Repairs to be Completed September 1.**—Work to be paid for from the road repair fund shall be completed on or before the first day of September in each year: Provided, That not exceeding one-quarter of the amount of such tax may be kept by the highway commissioner for later necessary repairs, or for plowing, rolling or removing snow in winter. § 4329.

1880. When Overseer to be Acting Commissioner.—If the highway commissioner be unable to take charge of the work on highways and bridges because of sickness, absence or any other reason, or in case of a vacancy in the office of township highway commissioner through death, resignation or otherwise, the overseer of highways residing in the same road district as the former highway commissioner resided shall have charge and supervision of all work, and shall act in the place and stead of the highway commissioner, until a new highway commissioner shall be appointed or elected, and shall have all the powers and duties of such township highway commissioner, and in such case warrants drawn by him and countersigned by the township clerk shall be paid by the township treasurer. § 4330.

1881. Permanent Improvement of Roads and Bridges.—As to the manner of doing work on roads and bridges, except repairs, see Section 1512 of this Guide.

1882. Compensation.—The overseer of highways shall be entitled to such compensation as the township board shall decide. The compensation of the overseer of highways shall be paid from the road repair fund, on approval of the township board. § 4331.

1883. Overseer Responsible for Tools and Machinery.—Each overseer of highways is personally responsible for the proper use and care of such tools and machines while in his charge, or in use in his road district, and any overseer or other person who through negligence or otherwise wilfully injures or damages such tool or machine shall be liable for such damage in an action of trespass on the case to be brought by said commissioner before any justice of the peace in said township or any adjoining townships. § 4487.

1884. Forfeiture for Neglect of Duties.—Any overseer of highways, having accepted such office, shall, for every neglect of the duties thereof, forfeit the sum of ten dollars. § 4458.

1885. Other Penalties and Forfeitures.—See sections 1655 to 1666 of this Guide, for provisions of law prescribing other penalties and forfeitures.

1886. Overseer May be Prosecuted.—Any overseer may be prosecuted by information or indictment for any deficiency in the highways occasioned or continued by his fault or neglect; and on conviction thereof may be fined in any sum not exceeding fifty dollars. § 4459.

1887. When Commissioner to Prosecute Overseer.—It is the duty of the commissioner, whenever any competent resident of his township shall make complaint in writing that any overseer in such township has refused or neglected to perform any of the duties required of him by law, and shall give or offer to such commissioner sufficient security to indemnify him against the costs which may be incurred in prosecuting for the penalty annexed to such refusal or neglect, forthwith to prosecute such overseer in the name of the people of this State for the recovery of such penalty. § 4460.

1888. Cutting of Brush and Noxious Weeds.—The provisions of law prescribing the duties of overseers of highways relating to the cutting of brush and noxious weeds are compiled in the preceding chapter, under "Commissioner of Highways." See sections 1753 to 1764 of this Guide.

1889. Duties in Townships Substituting Labor Assessment for Money Tax.—The provisions of law relating to the duties of overseers concerning highways in townships substituting labor assessments, instead of a money tax, have been compiled in Chapter XXV of the preceding Part, in connection with the duties of the commissioner of highways. In this chapter are compiled the provisions of law prescribing the duties of overseers relating to highways under the usual method of assessing and collecting road repair and highway improvement taxes.

CHAPTER III.

DUTIES OF OVERSEERS AS FENCE VIEWERS.

1890. Overseers to be Fence Viewers.—The overseers of highways, and the highway commissioners of the several townships in this State shall be fence viewers in their respective townships: Provided, That if in any case there shall not be at least two disinterested fence viewers, either of the two justices of the peace not members of the township board, or both if necessary, shall act as fence viewers whenever required. § 4599.

One who is given no notice of a meeting of fence viewers to determine the amount he should pay towards the cost of a partition fence is not entitled for that reason to have the entire proceedings, if otherwise regular, set aside, but is sufficiently protected if a new meeting is appointed to determine the amount to be paid by him, and he is given an opportunity to be present at that meeting.—Scofield v. Haire, 122 / 265.

1891. What Deemed a Legal and Sufficient Fence.—All fences four and one-half feet high and in good repair, consisting of rails, timber, boards, wire, or stone walls or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be considered equivalent thereto, in the judgment of the fence viewers, within whose jurisdiction the same may be, shall be deemed legal and sufficient fences. § 2206.

The word "fence," as used in this section, must be construed as including a mode of construction which will give the fabric, when completed, such reasonable strength as to confine or turn the animals usually restrained by fences in the country.—B. C. & E. S. R. R. Co. v. Austin, 21 / 407.

1892. Who to Maintain Partition Fences, Etc.—The respective occupants of lands enclosed with fences shall keep up and maintain partition fences between their own and the next adjoining enclosure, in equal shares, so long as both parties continue to improve the same; but the occupants of private ways and the occupants of the next adjoining enclosed lands shall keep up and maintain partition fences between such ways and such next adjoining lands, in equal shares, so long as such ways are used and such lands are improved. § 2207.

The obligation imposed by this section, applies only to the respective occupants of adjoining lands, and to partition fences. Such occupants are bound to maintain their proper portion of the fence between them. But the statute does not become operative and the duty does not arise, until the parties improve their lands, nor, until by agreement between them or by the action of the fence viewers, the portion of the fence to be built and maintained by each, has been duly assigned to him. Until such division and assignment, neither party is under any obligation to maintain any portion of such fence. If they see fit they may dispense with partition fences altogether. The duty to maintain partition fences is imposed by the law, in favor of the adjoining occupant only.—Aylesworth v. Harrington, 17 / 417. None but the occupants of lands enclosed by fences, are required to maintain partition fences between their own and adjoining enclosures.—Id. But it seems that any occupant of enclosed lands, no matter what his title is, may, if he has an interest in maintaining a partition fence, enforce the statute agaist the adjacent occupant; provided, the latter has such a right of possession as would authorize him to construct fences upon such adjacent lands, if he chose to do so.—Carpenter v. Vail, 36 / 226.

1893. Duty in Case of Neglect to Rebuild or Repair Partition Fences.—In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the township, who after due notice to each party, shall proceed to examine the same; and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they shall judge reasonable; and if such fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same. § 2208. [See Forms Nos. 121, 122 and 123.]

1894. Remedy of Person Making Repairs, Etc.—When any deficient fence built up or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient by two or more of the fence viewers and the value of such repairing or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand either of the occupant or owner of the land where the fence was deficient, the sum so ascertained. And in case of neglect or refusal to pay the sum so due on or before the first day of the next succeeding October after demand thereof is made, the sum so due shall become a lien on the said land and the fence viewers aforesaid shall report the same to the supervisor of the township, on or before the first day of November next thereafter, who shall cause the same to be spread upon the assessment roll, in a separate column for that purpose, opposite the description of the land owned or occupied by the person or persons neglecting to pay the same, the said tax to be collected in the same manner that other taxes are collected and paid over to the complainant upon the order of the township board. § 2209. [See Form No. 124.]

1895. When Shares of Partition Fences to be Assigned.—When any controversy shall arise about the rights of the respective occupants in partition fences, or their obligation to maintain the same, either party may apply to two or more fence viewers of the township where the lands lie, who, after due notice to each party, may in writing assign to each his share thereof, and direct the time within which each party shall erect or repair his share of the fence in the manner before provided; which assignment, being recorded in the township clerk's office, shall be binding upon the parties, and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence. § 2210. [See Form No. 125.]

1896. Aggrieved Party May Build Fence and Recover Value.—In case any party shall refuse or neglect to erect and maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by the aggrieved party, in the manner before provided; and he shall be entitled to the value thereof, ascertained in the manner aforesaid, and to be recovered in like manner. § 2211.

1897. When Occupant to Pay for Portion Assigned Him.—When, in any controversy that may arise between occupants of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his

just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and collected in the manner provided in this chapter. (Chap. 68, C. L., 1915.) § 2212. [See Form No. 126.]

1898. **Partition Fences to be Kept in Repair.**—All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise mutually agree. § 2213.

1899. **Proceedings When Lands are Divided by Water.**—When lands of different persons, which are required to be fenced, are bounded upon, or divided by any river, brook, pond or creek, which of itself, in the judgment of the fence viewers, is not a sufficient fence, and it is, in their opinion, impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is, if in such case the occupant of the land on the one side shall refuse or neglect to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or if such persons shall disagree respecting the same, then two or more fence viewers of the township wherein such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek. § 2214.

If such fence viewers shall determine such river, brook, pond or creek above mentioned, not to answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line, they shall, after giving notice to the parties, determine how, or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and shall reduce such determination to writing, and sign the same; and if either party shall refuse or neglect to make and maintain his part of the fence, according to the determination of the fence viewers, the same may be made and maintained by the other party as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner. § 2215. [See Form No. 127.]

1900. **When Occupants of Lands in Common May Have Division.**—When any lands, belonging to different persons in severalty, shall have been occupied in common, without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same township, in the manner provided in this chapter. § 2216.

To make a party liable to maintain a partition fence, it is not sufficient that he resides, or has his home on the adjacent premises, or that his wife owns them. To be an occupant in the sense of this section, the party must be in possession and have the use and control of the land, and the right to place erections and to construct fences upon it voluntarily if he so willed.—Carpenter v. Vail, 36 / 226.

1901. **When Fence Viewers May Assign Time for Making Fence, Etc.**—Upon the division and assignment as provided in the preceding section the fence viewers may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year, and

if either party shall not make his part of the fence within the time so assigned, the other party may, after having completed his own part of the fence, make the part of the other, and recover the ascertained expenses thereof, together with the fees of the fence viewers, in the manner provided in this chapter. § 2217.

1902. When Partition Fence Not to be Removed, Etc.—When one party shall cease to improve his land, or shall open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure, if the owner or occupant of such adjoining enclosure will, within two months after the same shall be ascertained, pay therefor such sum as two or more fence viewers shall, in writing, under their hands, determine to be the value of such partition fence belonging to such party. § 2218.

1903. Liability on Enclosing Unenclosed Lands.—When any unenclosed land shall be afterward enclosed the occupant or owner thereof shall pay for one-half of each partition fence standing upon the line between his land and the enclosure of any other occupant or owner, and the value thereof shall be ascertained by two or more fence viewers of the township, in writing under their hands, in case the parties do not agree, and if such occupant or owner shall neglect or refuse for thirty days after the value has been so ascertained and demand made to pay for one-half of such partition fence, the same shall be assessed and collected, together with the costs of ascertaining the same, as provided in this chapter. § 2219. [See Form No. 128.]

1904. When Fence Viewers to be Taken From Different Townships.—In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between townships, or partly in one township and partly in another, a fence viewer shall be taken from each township. § 2220.

1905. How Fences Running Into Water to be Made, Etc.—Where a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties, and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had, as in case of other fences, and with the like effect. § 2221.

1906. On Division of Line of Unimproved Lands, Who to Maintain, Etc.—In all cases where the line, upon which a partition fence is to be built between unimproved lands, has been divided by the fence viewers, or by agreement in writing between the owners of such lands, recorded in the office of the clerk of the township, or of one of the townships where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fences, agreeably to such division. § 2222. [See Form No. 129.]

1907. In What Case Partition Fence Needs Not be Maintained.—If any person shall determine not to improve any part of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and shall give six months' notice of such determination to all the adjoining occupants of lands, he shall not be required to keep up or support any part of such fence during the time his lands shall lie open and unimproved. § 2223.

1908. Penalty for Neglect of Duty by Fence Viewers.—Any fence viewer who shall, when requested, unreasonably neglect to view any fence, or to perform any other duty required of him in this chapter (Chap. 83, C. L., 1897), shall forfeit the sum of five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect. § 2225.

1909. When Damages for Trespass Not Recoverable.—No person shall be entitled to recover any sum of money, in any action at law, for damages done upon lands by any beast or beasts, unless the partition fences by which such lands are wholly or in part enclosed, and belonging to such person, or by him to be kept in repair, shall be of the same height and description as is required by the provisions of law. See Sec. 1891 of this Guide. See also § 2227.

1910. Compensation of Fence Viewers.—Each fence viewer shall be paid by the person employing him at the rate of two dollars a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover in an action of assumpsit double the amount of such fees. § 4600.

PART XVII

JUSTICES OF THE PEACE.

CHAPTER I.—Election, Qualification, Etc.
CHAPTER II.—The Solemnization of Marriage.
CHAPTER III.—The Holding of Inquests.
CHAPTER IV.—The Public Peace.
CHAPTER V.—The Collection of Penalties and Forfeitures.
CHAPTER VI.—Suits for Damages on Laying Out, Altering or Discontinuing State or Territorial Road.
CHAPTER VII.—Acknowledgment of Written Instruments.
CHAPTER VIII.—Disposition of Unclaimed Property.
CHAPTER IX.—Lost Goods, Estrays, Etc.
CHAPTER X.—Damages Done by Beasts.
CHAPTER XI.—Administering Oaths, Taking Affidavits and Depositions.
CHAPTER XII.—Duties of Justice Under Prohibition Laws.
CHAPTER XIII.—Fees of Justices of the Peace.
CHAPTER XIV.—Miscellaneous Provisions of Law Relating to Justices.

The act authorizing the publication of this Guide, contemplates the compilation of "all existing laws concerning the powers and duties of township officers." The Supreme Court has decided (39 Mich., 200), that "in exercising his judicial powers a justice represents the State rather than his township. It is, therefore, beyond the scope of this work to present that great mass of statutory provisions relating to the civil and criminal jurisdiction of justices, and which in no way concern them as township officers—indeed any attempt to do so in a work of this character would necessarily prove unsatisfactory rather than helpful. The ground has been covered (and more thoroughly than would be possible in a mere compilation) by treatises already published, and presumably in the hands, or within the reach of most justices.

CHAPTER I.

ELECTION, QUALIFICATION, CLASSIFICATION AND TERM OF OFFICE OF JUSTICES OF THE PEACE.

1911. Election of Justices.—The law relating to the number and election of justices of the peace has been compiled under the head of "Township Meetings," Chap. 1, Part II. See also Secs. 186 and 231 of this Guide.

1912. Term of Office and Classification of Justices.—Justices of the peace shall severally hold their offices for four years, except when elected to fill a vacancy in office, occurring before the expiration of the legal term of four years; and when elected to fill such vacancy, they shall hold during the unexpired portion of such term. But when there shall have been no previous election and classification of justices of the peace in any township, pursuant to the sixth article of the constitution of this State, the justices elected at such meeting shall be classed and divided by lot, respectively, for one, two, three or four years, and shall severally hold their offices accordingly. § 2060.

In case more than one existing vacancy in the office of justices of the peace shall be supplied by election at any township meeting, the classes of the persons elected to fill the same shall be determined by lot, within

the time and in the manner prescribed for classifying justices elected in new townships. § 2103.

For provisions of law relating to the time and manner of classifying justices elected on the organization of new townships, see Sections 28 and 29 of this Guide.

1913. When Justices to Enter Upon Duties.—The persons so elected justices of the peace shall enter upon the duties of their offices, respectively, as follows:

First, Those elected for the full term of four years, on the fourth day of July next succeeding their election;

Second, Those elected to fill vacancies, and those elected at the first township meeting in any new township, immediately upon the filing of their oath of office and security with the county clerk, as required by law. § 2097.

1914. How Vacancy in Office Created and Filled.—Whenever a justice of the peace shall remove from the township in which he was elected, or by a change in the boundaries of such township shall be placed without the same, he shall be deemed to have vacated his office. Const., VII, 19.

When a new township shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed to have vacated their respective offices. § 2098.

A vacancy in the office of justice of the peace shall be filled at the next annual township meeting. Act 203 of 1917, Chap. IV, Sec. 6.

Whenever a vacancy shall occur, by reason of death, resignation, removal, or otherwise, in the office of justice of the peace in this State, the township board of the township or the legislative body of the city shall be empowered to fill such vacancy and such appointee shall hold office by virtue of such appointment only until the next succeeding township or city election. Act 76 of 1917.

1915. Oath of Office of Justices.—Each justice of the peace elected to fill a vacancy, and each justice elected for a term less than four years, within ten days after notice of his election, and each justice of the peace elected for the full term of four years, on or before the fourth day of July next after his election, shall take and subscribe his oath of office before some officer authorized to administer oaths, and file the same with the county clerk. § 2149.

1916. When Justices to Give Security.—Each justice of the peace, before he enters upon the duties of his office, and within the time limited by law for filing his official oath, shall execute, in the presence of the supervisor of his township, or of the county clerk, with one or more sufficient sureties, to be approved of by such supervisor or county clerk, an instrument in writing, by which such justice and his sureties shall jointly and severally agree to pay to each and every person entitled thereto, all such sums of money as such justice shall become liable to pay, for or on account of any money which may come into his hands as a justice of the peace, upon demand thereof made by such person, his agent or attorney. § 2150. [See Form No. 130.]

If a justice receives uncurrent bills, or anything else than money, in satisfaction of a judgment, and endorses the same upon the execution, or on his docket, the judgment is thereby discharged to the extent of the amount so receipted; and he is liable for the payment in money of the amount so receipted. The liability of the justice to pay over moneys coming to his hands, etc., may be enforced against him and his sureties, or against him alone upon his common law liability for money had and received. The bond is merely a security in addition to his common law liability.—Welch v. Frost, 1 / 30.

1917. Approval and Filing of Security.—Such supervisor or county clerk shall indorse on such instrument his approval of the sureties therein named, and such justice shall then cause the same to be filed in the office of the county clerk, and a copy of such instrument, certified by such clerk under his hand and seal, shall be presumptive evidence of the contents and execution thereof. § 2151. [See Form No. 130.]

1918. Of Suits Against Justice and Sureties.—If any justice of the peace shall fail to comply with such agreement, it shall be competent for any person to whom such justice shall have become liable by reason of such failure, to sue such justice and his sureties, or any of them, in assumpsit, and to declare against them generally, for money had and received to the use of the plaintiff; and if the plaintiff, on the trial of such suit, shall establish his right to recover, he shall have judgment for principal, interest and costs. § 2152.

1919. Penalty for Entering Upon Office Before Filing Oath, Etc.—If any justice of the peace shall enter upon the execution of his office before having filed his official oath, or such agreement as aforesaid, as required by law, he shall forfeit the sum of one hundred dollars. § 2153.

CHAPTER II.

DUTIES OF JUSTICES OF THE PEACE RELATING TO MARRIAGE.

1920. Justice May Solemnize Marriages, Etc.—Marriage may be solemnized by any justice of the peace in the county in which he was chosen. § 11368.

1921. Marriage License to be Delivered to Justice.—It is necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in which either the man or woman resides, and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the State it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed. § 11376.

1922. Justice to Fill Out Certificate, Etc.—It is the duty of the clergyman or magistrate officiating at a marriage, to fill out the spaces of the certificate left blank for the entry of the time and place of the marriage, the names and residences of two witnesses, and his own signature in certification that the marriage has been performed by him. He shall separate the duplicate license and certificate, and deliver the half part designated duplicate to one of the parties, so joined in marriage, and within ten days return the original to the county clerk issuing the same. It shall be the duty of such clergyman or magistrate to keep an accurate record of all marriages solemnized in a book used expressly for that purpose. § 11379.

1923. Penalty for Violation of Act by Justice.—Any clergyman or magistrate who shall join together in marriage parties who have not delivered to him a properly issued license, as provided for in this act, or who shall violate any of the provisions of this act, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of one hundred dollars, or in default of payment thereof, by imprisonment in the county jail for a term of ninety days. § 11381.

1924. **Form of Marriage Ceremony.**—In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister, and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least two witnesses, besides the minister or magistrate present at the ceremony. § 11370.

1925. **Penalty for Neglect to Return Certificate.**—Any person, whose duty it shall be to return a marriage certificate to the county clerk, who shall neglect to return said certificate, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of not exceeding one hundred dollars or ninety days' imprisonment, or both, in the discretion of the court. § 11382.

CHAPTER III.

DUTIES OF JUSTICES RELATING TO INQUESTS.

1926. **When Justice to Take Inquest.**—Justices of the peace shall, subject to the provisions of this chapter (Chap. 266, C. L., 1915), take inquests upon the view of the dead bodies of such persons as shall have come to their death suddenly, or by violence, and of such persons as shall have died in prison. § 15645.

When death occurs from any violence done to a person by another, although such violence may not suddenly terminate the life of the party injured, still it is the duty of the officer to hold an inquest.—Lancaster v. Dean, 2 Grant's Cases, 262.
The chapter above referred to is § § 15645-64, C. L. of 1915.

1927. **When Justice to Summon Jury.**—As soon as any justice of the peace shall have notice of the dead body of any person found or lying within the county, who is supposed to have come to his death in any manner described in the preceding section, and the petition of not less than five citizens of the township, city or village, any one of whom shall not be a constable or deputy sheriff, in which the dead body may be lying, shall have been filed with said justice, praying that an inquest be had in such case, he shall forthwith summon six good and lawful men of the county to appear before him, at such place as he shall appoint, within said county. § 15646. [See Form No. 131.]

1928. **Roll Call and Oath of Jury.**—When the jurors thus summoned have appeared, the justice of the peace shall call over their names, and there, in view of the dead body, shall administer to them an oath or affirmation in substance as follows:

"You do solemnly swear (or affirm, as the case may be), that you will diligently inquire, in behalf of the people of this State, when, in what manner, and by what means, the person whose body lies here dead, came to his death; and that you will make a true inquest thereof, according to your knowledge, and such evidence as shall be laid before you." § 15647.

1929. **Summoning and Enforcing Attendance of Witnesses.**—The justice of the peace may issue subpœnas for witnesses returnable forthwith or at such time and place as he shall therein direct; and the attendance of the persons served with such subpœna may be enforced in the same manner, and they shall be subject to the same penalties, as if they had been served with a subpœna in behalf of the people of this State, to attend a justice court. In all such cases, it shall be lawful for the magis-

trate taking any such inquest, to require, by subpœna, the attendance of a competent physician or surgeon for the purpose of making a post-mortem examination, and of testifying as to the result of the same; and the amount of compensation for such attendance and services, shall be audited and allowed by the board of supervisors of the proper county. § 15648. [See Forms Nos. 132 and 133.]

1930. Oath to be Administered to Witnesses.—An oath or affirmation to the following effect shall be administered to each witness by the justice of the peace:

"You do solemnly swear (or affirm) that the evidence you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth." § 15649.

1931. When Testimony to be Reduced to Writing.—In all cases where any murder or manslaughter is supposed to have been committed, the testimony of all witnesses examined before the inquest, shall be reduced to writing by the justice of the peace, or some other person by his direction, and subscribed by the witnesses. § 15650. [See Form No. 134.]

When the testimony is reduced to writing, as required by this section, the magistrate should read it to the witness, and request him to sign it. The magistrate has power in his discretion, to conduct the examination in private.—Garnett v. Farrand, 6 B & C., 611.

1932. What Jury to Find and Certify on Inquisition.—The jury, upon the inspection of the dead body, and after hearing the testimony of the witnesses, and making all needful inquiries, shall draw up and deliver to the justice of the peace, their inquisition under their hands, in which they shall find and certify, when, in what manner, and by what means the deceased came to his death, and his name, if known, together with all the material circumstances attending his death; and if it appear that he came to his death by unlawful means, the jurors shall forthwith state who was guilty, either as principal or accessory, or were in any manner the cause of his death, if known. § 15651.

1933. Form of Inquisition.—Such inquisition, to be called a coroner's inquest, may be in substance in the following form:

County of ....., ss.

An inquisition taken at ....., in said county, on the ..... day of ....., before ....., one of the justices of the peace of the said county, upon the view of the body of ..... (or a person), there lying dead, by the oaths of the jurors whose names are hereto subscribed, who being sworn to inquire in behalf of the people of this State, when, in what manner, and by what means the said ..... (or person) came to his death, upon their oaths do say, (then insert when, where, in what manner, and by what means, persons, weapons or instruments, he was killed or came to his death). In testimony whereof the said justice of the peace and the jurors of this inquest, have hereunto set their hands the day and year aforesaid. § 15652.

1934. Duty of Justice in Case of Murder, Etc.—If the jury find that any murder, manslaughter or assault had been committed upon the deceased, the justice of the peace shall bind over, by recognizance, such witnesses as he shall think necessary, to appear and testify at the next court to be held in the same county, at which an indictment for such offense may be found; and he shall also return to the same court the inquisition, written evidence, and all recognizances and examinations by

him taken, and may commit to the jail of the county any witness who shall refuse to recognize in such manner as he shall direct. § 15653.

1935. Justice May Issue Process for Arrest of Accused Person.—If any person, charged by the inquest with having committed any such offense, shall not be in custody, the justice of the peace shall have power to issue process for his apprehension, and such warrant shall be made returnable before him or any other magistrate or court having cognizance of the case, who shall proceed thereon in the manner that is required of magistrates in like cases. § 15654. [See Form No. 135.]

1936. When Justice to Order the Burial of Dead Bodies.—When any justice of the peace shall take an inquest upon the dead body of a stranger, or being called for that purpose, shall not think it necessary, on view of such body, that an inquest should be taken, he shall cause the body to be decently buried; and if the justice of the peace shall certify that to the best of his knowledge and belief the person found dead was a stranger not belonging to this State, the expenses of the burial with the justice's fees, and all the expenses of the inquisition, if any were taken, shall be paid to the justice of the peace from the state treasury, the account of such expenses and fees being first allowed by the circuit court for the county; in all other cases the expenses and fees shall be paid by the county in which the inquisition was taken. But when an inquest is held on the body of any person who dies in either of the prisons or public reformatories of this State, the expense of such inquest shall be audited and paid by the State, as other charges against the State are audited and paid. § 15655. [See Form No. 136.]

1937. Disinterment of Dead Bodies for Purpose of Inquest.—Whenever complaint in writing and upon oath shall be made to any justice of the peace that any person has died, and that such person was buried in the county where such justice resides, and specifying in what township or city said person was buried, and containing a further statement that the complainant knows or has good reasons to believe that the said deceased person came to his or her death by means of poison or violence, or in consequence of any criminal act committed by any person known or unknown, it shall be the duty of such justice to examine the complainant and such witnesses as may be produced by him on oath, and reduce the same to writing, and if such justice shall be satisfied from such examination that there is just cause to believe that the deceased person named or described in such complaint came to his or her death by means of poison or violence, or in consequence of any criminal act, and that a post mortem examination of the body of such deceased person is necessary or will materially aid in the prosecution of any person charged or who may be charged with any criminal act resulting in the death of such deceased person, it shall be the duty of such justice of the peace to issue an order or process under his hand, directed to the sheriff of the county, commanding such sheriff, in the name of the people of the State of Michigan, forthwith to proceed with his under-sheriff, or one of his deputies, to the place where such deceased person lies buried, and to disinter and remove the body to some suitable and convenient place within the township or city where such body was buried, for the purpose of holding an inquest over the same; and said justice shall also proceed at once to summon a jury of inquest in the same manner as provided in Chapter 329 of the

Compiled Laws of 1897, and as soon as the sheriff shall have removed such body to a suitable place as above provided, the justice as well as the jury so summoned, shall proceed in the same manner, and shall have and exercise the same powers and duties as prescribed in said chapter. § 15660. [See Forms Nos. 137, 138 and 139.]

It would seem that an examination of complainant and his witnesses on oath, and in writing, separate from the complaint should be made before issuing an order to disinter, etc., under this section.—Sweet v. Negus, 30 / 406.
Chapter 329, C. L. of 1897, above referred to, is § § 15645-64, C. L. of 1915.

1938. Re-Interment of Dead Bodies After Inquest.—As soon as the inquest shall have been completed, as provided for in the preceding section, the sheriff shall at once cause the body of the deceased person to be re-interred in the same place from whence he removed the same. § 15661.

1939. Disposition of Effects Found on Body of Unknown Person.—Whenever any money or valuable property shall be found upon the body of an unknown deceased person within this State, it shall be the duty of the coroner or justice holding the inquest over the said body, or of any person who shall come in possession of said money or valuable property, to deliver all of said money or valuable property so found to the county clerk of the county where said body shall be found or be at the time of death, within ten days after said money or property shall have come into their possession. § 15662.

1940. Penalty for Violation of Act.—Any person violating any of the provisions of this act (84 of 1883) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars, or by imprisonment in the county jail not more than three months, or both such fine and imprisonment, in the discretion of the court. § 15664.

1941. Fees on Inquests.—The fees of the justice are as follows:

For the view of a dead body, and for taking and returning an inquisition thereon, three dollars;

For traveling to the place of such view, six cents for each mile;

For every subpoena, warrant, or venire for a jury, twenty-five cents;

Swearing each witness, ten cents; but the charges for swearing witnesses in any one case can not exceed fifty cents;

For taking a recognizance, twenty-five cents. See § 14604.

1942. Pay of Jurors, Etc., on Inquests.—Each juror sworn before any coroner or justice of the peace, on an inquest taken by either of them on view of any dead body, shall be entitled to receive one dollar and fifty cents for each day's attendance and seventy-five cents for each half day's attendance on such inquest, the accounts for such service to be allowed by the board of supervisors in counties not having a board of county auditors, and in counties having a board of county auditors by such board, on the certificate of such coroner or justice. § 14608.

1943. Fees of Constables and Witnesses.—The fees of constables and witnesses are the same as are allowed in criminal cases for like services or attendance. See § § 13718-20 and 14603.

CHAPTER IV.

POWERS OF JUSTICES RELATING TO OFFENSES AGAINST PUBLIC PEACE.

1944. Justices to be Conservators of the Peace.—Judges of the supreme court, circuit judges, and justices of the peace, shall be conservators of the peace within their respective jurisdictions. Const., VII, 18.

1945. May Order Person Into Custody Who Disturbs Religious Meeting.—Justices of the peace, within their jurisdiction, upon their own view of any person disturbing any assembly of people met for religious worship, may order the offender into the custody of any peace officer or any official member of the church or society assembled, for safe keeping, until he shall be held to bail or trial. See § 15491, C. L. of 1915.

1946. May Cause Person to be Apprehended for Breach of the Peace.—If any justice of the peace, upon view of any breach of the peace, or any other offense proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse to obey such justice, shall be punished in the same manner that is provided in § 14987, for refusing assistance to a sheriff; and no person to whom such justice shall be known, or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse, or pretense of ignorance of his office. § 14988.

1947. Penalty for Falsely Assuming to be a Justice.—If any person shall falsely assume or pretend to me a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take upon himself to act as such, or to require any person to aid and assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, or shall falsely take upon himself to act or officiate in any office or place of authority, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four hundred dollars. § 14989.

1948. May Order Riotous Assembly to Disperse.—If twelve or more persons assemble in a riotous or unlawful manner it is the duty of every justice of the peace to command the persons to peaceably disperse, etc. See Secs. 1156 to 1160 of this Guide.

1949. Duties of Justice on Sentencing Boy to Industrial School.—Every male person under the age of sixteen years and over the age of ten years, who shall be convicted before any court or magistrate of competent jurisdiction, for any offense punishable by law, by fine or imprisonment, or both, and who in the opinion of the court or magistrate would be a fit subject for commitment to the industrial school for boys, may be sentenced by such court or magistrate to the industrial school for boys until he shall reach the age of seventeen years, or until discharged by law, and such court or magistrate shall certify to the superintendent of said industrial school for boys the age of all persons committed, as near as can be ascertained, with cause of commitment, embracing all important facts connected therewith. No person under the age of twelve years shall be sentenced to the industrial school for boys as a juvenile disorderly person, or as a truant and disorderly person. All judgments and commitments rendered and made under this act, by police courts and

justices of the peace, shall, upon the reviewal by the proper circuit or probate judge of the proceedings and testimony taken and had on the trial, be approved; and that if such sentence be disapproved such police court or justice is hereby authorized to pass sentence as in other cases provided by law. § 1906.

1950. Transfer of Juvenile Criminal Cases to Probate Court.—If during the pendency of any criminal case against any child in any justice court, it shall be ascertained that said child is under the age of seventeen years, it shall be the duty of the justice before whom such case is pending, to immediately transfer such case, together with all papers connected therewith, to the juvenile division of the probate court, except in cases where the child is over fourteen years of age and is charged with a felony. § 2016.

1951. Warrant for Parents Neglecting to Send Children to School.—It shall be the duty of all truant officers, after having given the formal notice hereinbefore described, to determine whether the parent or other person in parental relation has complied with the notice, and in case of failure to so comply he shall immediately and within three days after having knowledge or being notified thereof, make a complaint against said parent or other person in parental relation having the legal charge and control of such child or children, before any justice of the peace in the county where such party resides for such refusal or neglect to send such child or children to school; and said justice of the peace shall issue a warrant upon said complaint and shall proceed to hear and determine the same in the same manner as is provided by statute for other cases under his jurisdiction, and in case of conviction of any parent or other person in parental relation for violation of this act, said parent, or other person in parental relation shall be punished according to the provisions of section three of this act. § 5982, Subd. (c), as Am. by Act 179 of 1917.

Act 48 of 1907 (§ 5988) for the compulsory education of deaf children, and Act 116 of 1907 (§ 1476) for the compulsory education of blind children, contain the above provisions for the execution of said acts.

PUNISHMENT: "Section 3 of this act," above referred to, is § 5981, C. L. of 1915, Am. by Act 179 of 1917. It provides that in case any parent or other person in parental relation, shall fail to comply with the provisions of this act * * * he shall be fined not less than five dollars nor more than fifty dollars or imprisoned in the county jail for not less than two nor more than ninety days, or both.

1952. Warrants for Arrest of Truants.—Upon the complaint upon oath and in writing made before any justice of the peace, by the parent or guardian, or other person knowing of the facts of his own knowledge, that any girl between the age of ten and seventeen years, or that any boy between the age of ten and sixteen years, or by the supervisor of any township, or other person knowing of the facts of his own knowledge, that such minor has been guilty of any of the acts specified in section 15576, C. L., 1915, such justice of the peace shall issue a warrant for the arrest of such minor, and upon conviction such minor, if a boy, may be sentenced by such justice of the peace to the industrial school for boys at Lansing, and if a girl, to the industrial home for girls at Adrian, boys until eighteen years of age, and girls until twenty-one years of age, unless sooner discharged according to law. But no person or persons shall be sent to the said industrial school for boys or to the industrial home for girls until the sentence therein has been submitted to and

approved by one of the judges of the recorder's court of the city of Detroit, or judge of the superior court of the city of Grand Rapids, or any circuit judge or probate judge of the county in which such conviction shall be had. § 15577. See also Sec. 1950 above.

CHAPTER V.

POWERS AND DUTIES OF JUSTICES RELATING TO PENALTIES AND FORFEITURES AND MONEYS COLLECTED.

1953. Collection of Penalties and Forfeitures.—It shall be the duty of every supervisor, whenever he shall know or have good reason to believe that any penalty of forfeiture has been incurred within his township, which shall be recoverable by action before a justice of the peace, forthwith to commence and prosecute a suit, in the name of the people of this State, for the recovery thereof. See section 1153 of this Guide.

1954. Jurisdiction of Justices.—Justices of the peace shall have jurisdiction of all actions for the recovery of penalties or forfeitures, where the amount of the penalty or forfeiture shall not exceed one hundred dollars. § 13397.

1955. Moneys to be Paid to County Treasurer.—All sums of money collected on account of any penalty or forfeiture, in pursuance of the foregoing provisions of this chapter (Chap. XXV of the Judicature Act, being § § 13393-13436, C. L. of 1915), shall be paid by the officer collecting or receiving the same, to the treasurer of the county within which such penalty or forfeiture was incurred, within twenty days after the collection or receipt thereof. § 13408.

1956. How Payment of Moneys Compelled.—If any sheriff, justice of the peace, or other officer shall neglect to pay over any moneys collected or received by him on account of any penalty or forfeiture, within the time limited in the preceding section, the county treasurer shall proceed by attachment in the circuit or county court for the county, to collect the moneys so required to be paid over to him, in the same manner, and with the like effect, as in case of an attachment against a sheriff for neglecting to return an execution in a civil suit. § 13409.

1957. Refusal to Pay Over Certain Moneys a Misdemeanor.—If any constable, justice of the peace, or any other officer, shall collect or receive in such capacity any money belonging to another, and shall neglect or refuse to pay the same to the person entitled thereto within a reasonable time after the demand thereof, the person so neglecting or refusing, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four times the amount of money so received, or both, at the discretion of the court. § 15311.

1958. Report to Prosecuting Attorney, Etc.—Within ten days after the final disposition of any criminal or other proceedings before any justice of the peace, to which the people of this State are a party, or wherein the county may be liable for any costs, it shall be the duty of the justices before whom such proceedings shall be had to make a report of the same to the prosecuting attorney of the county, which report shall embrace the following items: The title of the case; the date of filing

complaint; the offense charged; the plea; the names of attorneys or others who appeared to prosecute or defend; the date of the trial, examination or hearing; the verdict or finding and judgment; any certificate made by the court as to the probable cause for making the complaint; the names and attendance of jurors, and the names, mileage, and attendance of witnesses sworn, and an itemized statement of the officers' and court fees and how the same were disbursed, if paid to such justice. The prosecuting attorney shall, immediately after making his annual report to the attorney general, file said report with the county clerk. It shall also be the duty of every justice of the peace to issue to each juror impaneled in any such proceeding a certificate of his attendance as such juror and the amount of fees to which he is entitled, and deliver the same to such juror at once upon the discharge of the jury, and also to issue to each witness subpœnaed by the people upon his proving his mileage and attendance as provided by law, a certificate of the same. The prosecuting attorney shall furnish to justices suitable blanks for such reports and certificates, and the actual expense of procuring the same shall be audited by the board of supervisors and paid in the same manner as other contingent claims against the county. § 15813.

1959. Penalty for Neglect to Report.—In case any justice of the peace shall neglect or refuse to make a report to the prosecuting attorney within ten days after the disposition of any such proceeding before him, as herein provided, he shall be deemed guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine of five dollars, and shall forfeit all right to any fees for his services in every proceeding in which he so neglects or refuses to make such report; and for each report so made, within the time herein required, the justice making the same shall receive a fee of twenty-five cents, to be paid by the county in which such justice of the peace holds his office. § 15814.

CHAPTER VI.

DUTIES OF JUSTICES WHEN DAMAGES ARE CLAIMED ON LAYING OUT, ALTERING, OR DISCONTINUING STATE OR TERRITORIAL ROAD.

1960. Aggrieved Person May File Petition With Justice.—Any person feeling himself aggrieved by the action of the board of supervisors by the laying out, altering or discontinuing any road designated by this act (the General Highway Law, § § 4522-24, C. L. of 1915), may have his damage assessed by a jury composed of twelve freeholders residing in the township where the land through which said road has been laid out, altered or discontinued is situated. Such person so complaining as against the action of such board, may, within thirty days after receiving notice in writing from the clerk of such board of supervisors of any county that any road has been land out, altered or discontinued across lands owned by him, go before any justice of the peace in said township where such land is located and file with such justice a petition setting forth the fact of the laying out, altering or discontinuing of such road, running through lands owned by him, whereby he has been, or is likely to be damaged, and further praying the court that a venire be issued summoning a jury of twelve freeholders of said township to determine the necessity of laying out, altering or discontinuing said highway, and the taking of private

property therefor, and the amount of such damage he has sustained, or is likely to sustain from the action of such board as aforesaid. § 4525. [See Form No. 140.]

1961. Notice of Hearing and Selection of Jury.—On the receipt of such petition the justice shall at once give notice to the petitioner in writing of the date when said petition will be heard before him, and shall also notify in writing the supervisor of said township of the time and place when the same will be heard, which shall not be less than six days from the date of the petition, nor more than twelve. And on the date and at the hour mentioned in said notice the justice shall direct any constable of said township then present to write the names of twenty-four freeholders from which to select a jury of twelve persons. On the compliance with such order by the constable, the supervisor, if he be present, and if not present, then the justice aforesaid, together with the person filing such petition, shall proceed to strike each alternately, from such list, the names of six persons, and the remaining twelve names on said list shall constitute a jury for the purposes aforesaid. But in case any of such jurors on the original list shall be unable to sit, then the court shall direct the officer present to summon talesmen to take their places until such panel is full. § 4525. [See Form No. 141.]

1962. Hearing of Petition and Determination of Damages.—When such panel is completed, the justice shall swear said jurors to well and truly determine as to the matters set forth in the petition of the person making the same. Said justice shall have full power to issue subpœnas and to compel the attendance of witnesses, the same as he would have in matters triable before him; and all proceedings on the hearing of said petition shall be conducted as nearly as may be as are trials before justices of the peace. If the jury, on hearing all of the evidence both for and against the allowance of damages, and the necessity for the taking of said lands for private purposes, shall determine that the person claiming to be grieved is entitled to damages, then they shall determine as to the amount, and the necessity for the taking of said lands, and under their hands certify to the justice such sum, and the necessity aforesaid, and, in case they determine that such person is not so entitled, they shall certify this fact to said justice, who shall, upon the rendition of such verdict, file the same, and, within ten days from the date of its rendition, transmit the same to the clerk of said county, and shall also serve a copy of the verdict and notice of all proceedings, in relation to said application upon all persons whose lands are affected by said application, which notice shall be full and explicit as to any and all proceedings had therein, and shall at the next regular meeting of the board of supervisors of his county, present the same to such board and cause it to be entered upon the minutes of such board. In case damages have been awarded, as aforesaid, then such board of supervisors shall apportion the amount to the several townships in said county, and the same, when so raised, shall go into and become a part of the general fund of such county, and they shall, at the same time, issue an order to the person or his representatives or assigns, as the case may be, for such sum on the county treasurer, and payable out of any fund in the county treasury not otherwise appropriated. The person thus claiming damage shall file with such justice at the time he files his petition, a bond in the penal sum of fifty dollars, conditioned to pay all costs of such justice, officer

and jury; but in case damages are awarded, then the costs of such proceedings shall be certified by said justice along with the award and become a part and parcel thereof, and payable to said petitioner in addition to the award of the jury. In case the jury first summoned shall not agree, then the said cause or hearing shall stand adjourned to some day fixed by said justice, but not for a longer period than ten days; and on the day to which the same shall be continued a jury shall be empaneled and the matter submitted as hereinbefore directed. § 4525. [See Forms Nos. 142 and 143.]

CHAPTER VII.

POWERS OF JUSTICES RELATING TO THE EXECUTION OF WRITTEN INSTRUMENTS.

1963. What Instruments May be Executed and Acknowledged Before a Justice.—Deeds executed within this State, of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds may acknowledge the execution thereof before any judge, clerk or commissioner of a court of record, or before any notary public, justice of the peace, or master in chancery, within the State, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand. § 11694.

Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law, for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer, indorsed thereon, shall entitle such instrument to be received in evidence on the trial of any action, with the same effect, and in the same manner, as if such instrument were a conveyance of real estate. § 12529.

A justice of the peace has no authority to take an acknowledgment out of his own county. —Brown v. McCormick, 28 / 218.

1964. Acknowledgments of Married Women, How Taken.—The acknowledgment of any married woman to a deed of conveyance or other instrument affecting real property, may be taken in the same manner as if she were unmarried. § 11698. See also § 11756.

1965. Forms of Acknowledgment.—Either the forms of acknowledgment now in use in this State, or the following, may be used in the case of conveyance or other written instruments, whenever such acknowledgment is required or authorized by law for any purpose.

Begin in all cases by a caption specifying the state and place where the acknowledgment is taken.

First, In the case of natural persons acting in their own right:

On this ..... day of ..... 19.., before me personally appeared A B (or A B and C D) to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

Second, In the case of natural persons acting by attorney:

On this ..... day of ..... 19.., before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D.

Third, In case of corporations or joint stock associations:

On this ..... day of ..... 19.., before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association) and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A B acknowledged said instrument to be the free act and deed of said corporation (or association).

In case the corporation or association has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words "and that said corporation (or association) has no corporate seal."

In all cases add signature and title of the officer taking the acknowledgment. § 11755.

CHAPTER VIII.

POWERS AND DUTIES OF JUSTICES RELATING TO UNCLAIMED PROPERTY.

1966. Consignee to Give Notice of Reception of Property.—The law provides that the consignee shall, if the owner of any goods left with him be known to him, notify such owner by mail of the reception of such goods, and in case the property shall remain unclaimed for three months thereafter, the person having possession of the goods shall give notice by publication once in each week for four successive weeks in a newspaper published in the same county. See § § 7433-35. [See Form No. 144.]

1967. Application to Justice for Order of Sale.—In case the owner or person entitled to such property shall not, within three months after the first publication of such notice, claim such property and pay the lawful charges thereon, including the expense of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county, an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. § 7436. [See Form No. 145.]

1968. Justice to Make Inventory and Order of Sale.—Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand, that the property therein described be sold by any constable of the city or township where the same shall be, at public auction, upon due notice. § 7437. [See Form No. 146.]

1969. Disposition of Proceeds of Sale, Etc.—From the proceeds of such sale, the justice shall pay the charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant, if there be not sufficient for the payment of the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to one dollar for each day's services rendered by him in such proceedings. Such justice shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory and order of sale, and return hereinbefore mentioned, together with a statement of the charges and expenses incurred in respect to such property, as ascertained and paid by him, with a statement of his own fees, and shall at the time pay over to such treasurer any balance of the proceeds of the sale, remaining after payment of such charges, expenses and fees. § § 7440-41. [See Form No. 147.]

CHAPTER IX.

DUTIES OF JUSTICES RELATING TO LOST GOODS AND STRAY ANIMALS, AND ANIMALS RUNNING AT LARGE.

1970. Justice to Make Appraisal of Lost Goods or Stray Animals.—Every finder of lost goods or stray animals, of the value of ten dollars or more, shall, within three months, and before any use shall be made thereof, procure an appraisal of the same, to be made and certified by a justice of the peace of his township, which appraisal he shall, within said three months, cause to be filed with the township clerk; and he shall pay to such justice fifty cents for such appraisal and certificate, and six cents for each mile necessarily traveled by him in such service, and to the clerk six cents for filing the certificate. § 7450. [See Form No. 148.]

1971. When Justice to Determine Compensation to Finder.—If the owner or person entitled to the possession of any such money or goods, other than stray animals, shall appear at any time within one year after such entry with the township clerk, and make out his rights thereto, he shall have restitution of the same, or of the value thereof, upon his paying all the costs and charges aforesaid, together with a reasonable compensation to the finder for keeping and taking care of the same, and for his necessary travel and expenses in the case; which charges shall, in case of disagreement between the owner and finder, be determined by some justice of the peace of the township, who shall certify the same. § 7451.

1972. When Owner to Have Restitution of Stray Beast.—If the owner or person entitled to the possession of any such stray beast, shall appear within six months after such entry with the township clerk, and shall make out his right thereto, he shall have restitution of the same, upon paying all lawful charges as before provided in the case of lost goods. § 7453.

1973. Seizure of Animals Running at Large.—The provisions of law relating to this subject have been compiled in Part XIX. See sections 2148 *et seq.* of this Guide.

CHAPTER X.

POWERS AND DUTIES OF JUSTICES RELATING TO DAMAGES DONE BY BEASTS.

1974. Duties of Justices Relative to Damages for Sheep Killed by Dogs.—Whenever any person shall sustain a loss by the killing or wounding of his live stock by any dog or dogs, he may call upon a disinterested justice of the peace of the township where such killing or wounding occurred, not of kin to such person or otherwise interested therein, who shall proceed to view the live stock so killed or wounded, and if from such view he shall be satisfied that the same were killed or wounded by a dog or dogs he shall make a certificate thereof in writing, stating such fact, and the amount of damage sustained by such person, and shall deliver the same to the clerk of the township or village in which such killing or wounding occurred, who shall file and record the same in his office. The said justice shall receive for his services in each case the sum of two dollars, and mileage at the rate of ten cents per mile for going only, over the usually traveled road, to be paid from the fund created by this act. Any justice of the peace may examine witnesses under oath relative to any such view and when witnesses are examined a statement of their evidence shall be forwarded with the certificate of damage to the said clerk. Act 347 of 1917, Sec. 7. [See Form No. 149.]

1975. Duty of Justice Relative to Rabid Dogs.—Any member of the board of health or any resident of the township may make complaint to any justice of the peace of said township when any dog within the township is rabid, or has been bitten by or been fighting with a dog that is rabid or has been running at large in violation of the order of the board of health. Upon such complaint it is the duty of the justice to give notice to the owner of such dog or dogs to appear forthwith for the hearing of said complaint. Upon such hearing, if the justice be satisfied that the said dog is rabid, has been bitten by or been fighting with a dog that is rabid, or has been running at large in violation of the said order of the board of health, he is authorized to make an order that such dog or dogs be killed. But the said justice, in his discretion, in all cases in which it does not appear at the hearing that the dog or dogs in question are rabid, may order the said dog or dogs restrained for a period of at least ninety days. In all cases in which the owner of the dog complained against cannot be ascertained, the justice may immediately order the said dog to be killed. § 5117.

1976. Justice to Order Dog Killed.—In all cases in which a dog is ordered killed the justice shall issue an order to any constable of the township directing him to forthwith kill and bury the said dog, for which service the constable shall receive a fee of one dollar to be paid by the township out of its general fund in the manner that other constable fees are paid. § 5118.

1977. Payment of Loss for Domestic Animals Killed by Dogs.—Whenever any rabid dog shall infect any domestic animal with rabies, and said animal shall die therefrom or be ordered killed on account thereof, the owner of said animal shall be reimbursed for the said loss in the manner and out of the fund provided by act number forty-eight of the public

acts of nineteen hundred one, and the amendments thereto. (See Sec. 1974.) But when any domestic animal shall be infected with rabies by a dog belonging to the owner of said domestic animal, and said animal shall die from said infection or be ordered killed on account thereof, then the owner of said domestic animal shall in no case be reimbursed for said loss, as herein provided. § 5119.

1978. Adjustment of Claim of Person Impounding Beasts.—If the owner or keeper of the beasts shall be dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace; and the sum determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof. If the sum for which the beasts are impounded and detained shall not be paid within fourteen days after notice of the impounding shall have been given, or after the last publication of such notice in a newspaper, and shall not have been determined as aforesaid, the person who impounded them shall apply to a justice of the peace and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice; and the persons so appointed and sworn shall ascertain and determine the sum due from the owner or keeper of the beasts for damages, costs and expenses for which they are impounded and detained, including a reasonable compensation for their own services. § § 14789-90. [See Forms Nos. 150, 151 and 152.]

CHAPTER XI.

POWER OF JUSTICES TO ADMINISTER OATHS AND TAKE AFFIDAVITS AND DEPOSITIONS.

1979. Power to Administer Oaths Generally.—Whenever any oath or affidavit is or may be required or authorized by law in any cause, matter or proceeding, except oaths to witnesses and jurors in the trial of a cause, and such other oaths as are or may be required by law to be taken before particular officers, the same may be taken before any justice of the peace. § 12571.

1980. Justice May Administer Oaths in Probate Proceedings.—All oaths required to be taken by executors, administrators, guardians, trustees, commissioners, appraisers, and dividers of estates, or by any other person in relation to any proceeding in the probate court, may be administered by the judge of probate, register of probate, any justice of the peace or notary public, and a certificate thereof shall be returned and filed in the probate court. § 13769.

1981. Power of Justice to Take Depositions.—The testimony of any witness may be taken by deposition de bene esse, in any civil cause or matter, begun or pending before any justice of the peace in the State of Michigan, or in any other civil proceeding, when the witness is, or is about to go or resides out of the State of Michigan, or is about to go, or resides more than fifty miles from the place of trial, or beyond the jurisdiction of the court; or when the witness is sick, aged or infirm, or where there is reasonable cause for apprehension that his testimony cannot be

had at the trial of the cause, or where it is needed for use on hearing of motions, petitions, proceedings for injunctions or upon any other interlocutory or other proceedings prior to final hearing of any cause; and in all cases where affidavits are permitted to be used in proceedings before the court; also, when it is desired to take conditionally and perpetuate testimony in suits to be begun; and in any other case not above provided for when it shall appear to the court or judge thereof that the purposes of justice will be aided thereby. The deposition may be taken before any justice of the peace. § 12494. [See Form No. 153.]

1982. Taking of Depositions by Commissioner.—In any case pending before a justice of the peace, such justice shall upon the affidavit showing reason therefor, issue a commission upon which shall be printed section 1983 for the taking of the testimony of such witness before any person therein appointed as commissioner. Written interrogatories to be put to such witness by such commissioner, may be attached to the commission; if attached, a copy thereof shall be attached to the notice which shall in any case be given to the opposite party or his attorney, of the time and place of taking testimony under such commission. Cross and redirect interrogatories, which it is desired the commissioner shall put to the witness, shall thereupon be promptly furnished to the respective parties, and to such commissioner. Where default or order, pro confesso, has been entered in the cause, notices shall not be necessary. § 12495. [See Forms Nos. 154 and 155.]

1983. Rules Governing Taking of Depositions.—Each witness shall be sworn or affirmed by the officer or person empowered to take such testimoney, to tell the truth, the whole truth, and nothing but the truth, concerning the matter at issue in the cause. Every witness may be examined, cross-examined, and re-examined, orally, and also so examined in addition to written, direct or cross interrogatories. Examinations may be adjourned from time to time. Testimony may be written or taken stenographically and transcribed under direction of the officer so taking the same and shall be signed by the witness and certified as correct by the official before whom it is taken, but signatures of witnesses may be waived in writing by agreement of parties. The deposition when taken shall be forthwith enclosed by the official before whom the same is taken, and endorsed with the title of the court and cause, and that the deposition was taken and sealed up by him, and how it is to be sent, and he shall sign the endorsement, and the same shall be transmitted by mail or otherwise, to the court in which the cause is pending, and in case such deposition is taken for use before commissioners on claims appointed by any probate court, to such court, and then be opened by the court or clerk or register, and written notice thereof then given by mail or otherwise to the parties. Objections to notice of, or objections to the manner of taking the testimony, or of certifying or returning the deposition, shall be regarded as waived unless made in writing within ten days after knowledge or notice of the return thereof. § 12497.

CHAPTER XII.

DUTIES OF JUSTICES UNDER PROHIBITORY LIQUOR LAWS AND THE ACT PROVIDING FOR THE ENFORCEMENT OF THE DRUG AND LIQUOR, DAIRY AND FOOD AND WEIGHTS AND MEASURES LAWS.

1984. To Render Service Requested by Food and Drug Commissioner.—The food and drug commissioner shall be entitled to the advice and assistance of the attorney general, and all prosecuting attorneys, sheriffs, police officers, and other peace officers within the State shall, when called upon for aid and assistance by such commissioner, render such service as may be requested by him, within the scope of his authority. Act 263 of 1917, Sec. 7.

1985. To Receive Complaint Under Liquor Laws.—It shall be the duty of the said commissioner to supervise and secure the enforcement of all the laws of the State relating to the manufacture, sale, bartering, furnishing, giving away, receiving, possessing or the use of intoxicating liquors and all laws in any way relating to the liquor traffic, and for this purpose said commissioner, his deputy, inspectors and agents may make, or cause to be made, complaint of the violation of such laws before any proper court or magistrate. Act 263 of 1917, Sec. 8.

1986. Penalty for Failure to Aid Food and Drug Commissioner.—Any officer required by this act to give assistance to the food and drug commissioner who shall fail or refuse so to do shall be deemed guilty of a misfeasance in office and such failure or refusal shall be deemed a ground for removal from office. Nothing in this act contained shall in any way be construed as relieving any of the said officers from the performance of duties devolving upon them by virtue of the laws of this State. Act 263 of 1917, Sec. 9.

1987. Justice Not to Require Security for Costs.—Whenever complaint shall be made to a justice of the peace or court having jurisdiction, of any violation of the provisions of this act, he shall not require security for costs to be given, but shall take the complaint and examination of the witnesses as in other cases, and if the offense appears to have been committed he shall issue his warrant for the arrest of the offender, and shall notify the prosecuting attorney, whose duty it shall be to prosecute the same. Act 338 of 1917, Sec. 48.

Act 338 of 1917, referred to in this section, is entitled: "An act to prohibit the manufacture, sale, keeping for sale, giving away, bartering or furnishing any vinous, malt, brewed, fermented, spirituous or intoxicating liquors, except for medicinal, mechanical, chemical, scientific and sacramental purposes; to regulate the manufacture, sale and possession thereof for such excepted purposes; to provide for the enforcement of, and to prescribe penalties for violations of this act; to prohibit certain advertising and advertisements pertaining to the liquor traffic; to prescribe the duties of officers, and of carriers pertaining to the liquor traffic; to prescribe rights of action, recovery of damages and rules of evidence thereunder; and to repeal all acts in conflict therewith."

1988. Justice May Issue Warrants for Search and Seizure.—If any person makes a sworn complaint or affidavit before any magistrate authorized to issue warrants in criminal cases, that he has reason to believe and does believe that any intoxicating liquors are being manufactured, sold, furnished or given away, or kept for the purpose of being sold, furnished or given away contrary to law, or that any such liquors are stored, temporarily or otherwise, in any depot, freight house, express

office, or in any other building or place with the apparent intention of being delivered for the purpose of being sold, furnished or given away contrary to the provisions of this act, such magistrate shall immediately issue his warrant to any officer whom the complaint may designate, having power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and if such liquors are there found, to seize the same together with the vessels in which they are contained, and all the implements and furniture used and kept for such illegal selling, furnishing, giving away or storing of such liquors, and them safely keep and make immediate return on said warrant. Such liquors, furniture, vessels and implements used in such manufacturing, keeping or selling shall be held subject to the order of such court or magistrate, to be used as evidence in the prosecution of any case for the violation of this act. Act 338 of 1917, Sec. 25.

1989. Complaint for Violation of Prohibitory Liquor Law.—When such intoxicating liquors or implements, vessels or furniture are seized, as hereinbefore provided, the officer serving the warrant shall forthwith file a complaint in writing and on oath, charging the violation of the law which the evidence in the case justifies. If such officer refuses or neglects to file such complaint, then the person filing the affidavit for a search warrant, or any other person, may file such complaint, but nothing herein contained shall prevent any person or officer from filing such complaint before the search warrant is issued or served, and all intoxicating liquors, furniture, vessels and implements seized may be used as evidence at the trial or hearing, based upon such complaint charging the violation of this act. Act 338 of 1917, Sec. 26.

1990. Affidavit Required before Issue of Search Warrant.—No warrant for search shall be issued until there has been filed with the magistrate an affidavit describing the house or place to be searched, the things to be searched for, and alleging substantially the offense in relation thereto, and that affiant believes, and has good cause to believe that such liquor is there concealed: Provided, however, That any description that will enable the officer to find the house or place to be searched shall be deemed sufficient. The warrant for search shall be directed to the proper officer and shall recite all of the material facts alleged in the affidavit, and describe the things to be searched for and the place to be searched. A warrant for search and seizure substantially in the following form shall be sufficient:

The State of Michigan, ... County, ss.

To ....., Greeting.

Whereas there has been filed with the undersigned an affidavit (here set out the material facts alleged in the affidavit):

These are, therefore, to command you in the name of the People of the State of Michigan, together with the necessary and proper assistance, to enter into (here describe the place designated in the affidavit) of the said ..... situated in the ..... of ..... in the county aforesaid, and there diligently search for the said intoxicating liquors and vessels, implements and furniture, to-wit: (here describe the articles as in affidavit) and that you will bring the same or any part thereof found in such search forthwith before me to be disposed of and dealt with according to law.

Given under my hand and seal this ..... day of .....

.....

Official title.

Act 338 of 1917, Sec. 27.

1991. Fluids Destroyed to Prevent Seizure Prima Facie Intoxicating Liquor.—If fluids are poured out, secreted or otherwise destroyed by the owner of the premises, or occupant, or by any tenant, assistant or other person, when the premises are searched or to be searched, manifestly for the purpose of preventing their seizure by officers authorized to make such search and seizure, such fluids shall be held to be prima facie intoxicating liquor and intended for unlawful sale. Act 338 of 1917, Sec. 28.

1992. Disposition of Liquors, Etc.—When liquors, vessels, implements or furniture are seized as provided in the preceding section, the officer who made such seizure shall, upon his return upon the warrant, make a statement setting forth their seizure by him and their place of detention, and they shall be held by said officer subject to the order of the court. Upon final judgment of the court upon the complaint provided for in section twenty-six (section 1987 of this chapter), such intoxicating liquors shall be returned to their lawful owner in case of acquittal, or destroyed, according to the order of the court, in case of conviction. When liquors, vessels, implements or furniture shall have been seized by virtue of any warrant, said warrant shall not be held void, nor such liquors, vessels, implements or furniture returned to any person claiming the same by reason of an alleged insufficiency of the description in the complaint or warrant: Provided, That a new complaint or warrant shall be issued within twenty-four hours. Act 338 of 1917, Sec. 29.

If no one is found in possession of the premises where such liquor may be found, the officer taking the same shall post in a conspicuous place on the building or premises, a copy of his warrant, and take possession of such liquors, vessels, implements and furniture, and hold them subject to the order of the court or magistrate issuing the warrant, and make return of his doings thereon. Whereupon it shall be the duty of the magistrate to fix a time for hearing and determining the purpose for which such liquors are kept, and issue notice thereof to the officer who shall post a copy thereof on the building or premises where the liquors are found. If at the time of said hearing no person or persons appear, nor within thirty days thereafter, to claim such liquors, vessels, implements and furniture, the magistrate or court shall order the same destroyed. Act 338 of 1917, Sec. 30.

1993. When Warrant to Search Dwelling House May be Issued.—No warrant shall be issued to search a private dwelling house occupied as such unless some part of it is used as a store or shop, hotel or boarding house, or for any other purpose than a private residence, or unless such private dwelling house is a place of public resort.—Act 338 of 1917, Sec. 31.

1994. Examination of Person Found Intoxicated.—Whenever complaint shall be made by any person on oath before any justice of the peace or other officer or magistrate, having jurisdiction, that any person is found intoxicated or has been intoxicated in any hotel, store, place of business, public building, street, alley, highway, or other public place, it shall be the duty of such justice, municipal or police court, to issue a

subpœna to compel the attendance of such person so found intoxicated, or who has been intoxicated, as aforesaid, to appear before the justice or court issuing the same, to testify in regard to the person or persons of whom, and the time when, and the place where, and the manner in which the liquor producing his intoxication was procured; and if such person, when subpœnaed, shall neglect or refuse to obey such writ, the said justice or court who issued the same shall have the same power and authority to compel the attendance of the person so subpœnaed and to enforce obedience to such writ as in other civil cases. Whenever the person so subpœnaed shall appear before the justice or court to testify as aforesaid, he shall be required to answer on oath questions relating to when, where, and of whom he procured, obtained or received the liquor or beverage the drinking of which contributed to the intoxication mentioned in this complaint. And if such person shall refuse to answer fully and fairly such questions, on oath, he shall be punished and dealt with in the same manner as for a contempt of court in other cases. If it shall appear from the testimony of such person that any of the offenses specified in this act have been committed, such justice or court shall make a true record of the same and cause it to be subscribed by such witness; and the said testimony or answers, when subscribed as aforesaid, shall be deemed a sufficient complaint to authorize the issuing of a warrant to arrest any person or persons who may appear from said complaint to be guilty of having violated any of the provisions of this act. Any person arrested on a warrant issued pursuant to the provisions of this section shall be brought before the justice or court issuing the same, and all subsequent proceedings in such suit or prosecution shall be governed by the rules of the law applicable thereto, as in other criminal cases: Provided, That the person so testifying under the provisions of this section shall not be held or prosecuted for the intoxication concerning which such testimony shall be given. Act 338 of 1917, Sec. 36.

1995. Seized Liquors, Etc., Not Subject to Replevin.—Intoxicating liquors, furniture, vessels and implements seized as hereinbefore provided, shall not be taken from the custody of the officer by a writ of replevin or other process while the proceedings herein provided are pending. Act 338 of 1917, Sec. 32.

1996. Carrier Deemed to be Agent of Consignor.—If any prohibited liquors or beverages are delivered to a carrier to be by the carrier transported and delivered C. O. D. to any person at a point in this State, meaning thereby to collect on delivery by the carrier for the consignor the amount of the purchase money for such liquors, then and in any such case the carrier shall be deemed and held to be the agent of the consignor, and all such prohibited liquors and beverages shall remain the property of the consignor until actually delivered and the money paid to the carrier therefor; and the servant and agent of the carrier who knowingly delivers any such liquors or receives pay therefor, within this State, shall be guilty of a violation of this act. Act 338 of 1917, Sec. 33.

1997. Books and Way Bills Subject to Public Inspection.—The books and way bills used by any common carrier or any other person, firm or corporation, in handling, shipping, transporting or delivering any intoxicating liquors shall be open to public inspection at all times during the business hours; and any person shall be permitted to make copies of any part of said books or way bills relating to the transportation or shipping

of any such liquors. Every person, firm or corporation, or official, agent or employe thereof, who shall refuse to comply with the demands of any such person to permit the inspection of any such books or way bills, or the making of such copies, shall be guilty of a violation of this act. Act 338 of 1917, Sec. 34.

1998.—Unlawful Keeping or Having Intoxicating Liquors.—The keeping or having in any house or building, or in any room or place occupied by any person, corporation, club, association or society, except as a private dwelling house occupied as such, any intoxicating liquors for the purpose of selling, giving away or furnishing to those frequenting such places, or to others, shall be held to be the keeping of a place where intoxicating liquors are sold, furnished or given away. Proof of consumption or intended consumption of any intoxicating liquors, by any person visiting, resorting to or frequenting any of the places mentioned in this section, shall be prima facie evidence of the sale, giving away or furnishing of such liquor or beverage to such person in violation of the provisions of this act. Act 338 of 1917, Sec. 35.

CHAPTER XIII.

FEES OF JUSTICES OF THE PEACE.

It being the purpose of this Part to present the duties of justices of the peace only as a township, and not as a judicial officer, only such fees as appertain to his township office are here given. For fees of justices in civil and criminal proceedings, see § § 14397 and 15897, C. L. of 1915.

1999. Certain Fees of Justices.—

For appointing appraisers of estates of deceased persons, in each case	$ .15
For marrying and making return thereof	2.00
For taking acknowledgment of a deed or other instrument, for each person acknowledging	.25
For viewing sheep killed by dogs, and making certificate of amount of damages	2.00
For notice of, and making sale, of animals seized while running at large:	
For the first horse sold	3.00
For every additional horse	.50
For each cow, calf or other cattle, not exceeding five	1.00
For every additional cow, calf or other cattle	.25
For every sheep or swine, not exceeding five	.50
For every additional sheep or swine	.10
For each appraisal of lost goods or stray animals	.50

2000. Fees That Justices May Charge Soldiers, Etc.—No judge of the probate, clerk of any court, justice of the peace, notary public, or any person authorized to administer oaths under and by the provisions of the laws of this State, shall be allowed to charge any discharged soldier, seaman, or the legal representative of a discharged or deceased soldier or sailor, more than fifteen cents for administering any oath, or giving any official certificate, for the procuring or obtaining payment of any pension, bounty, or back pay. That no judge of probate, clerk of any court, justice of the peace, notary public, or any person authorized to administer oaths, under and by the provisions of the laws of this State,

shall be allowed to charge any widow of a deceased soldier, or guardian to minor children, or other legal representative of such deceased soldier or sailor, more than twenty-five cents for the oath or oaths of such widow, guardian, or legal representative and their witnesses. § § 14614-15.

2001. Extra Charge to Soldiers, Etc., a Misdemeanor.—Any such officer who may ask or accept more than the fees enumerated in the preceding section for any such service shall, on conviction thereof, be adjudged guilty of a misdemeanor. § 14616.

2002. Fees for Services Under Highway Law.—The just fees and charges of all justices of the peace, sheriffs, constables, and other officers who may render any service for or at the request of any commissioner of highways under the provisions of this act, shall be allowed by the township board and paid by the township, and it is hereby made the duty of such officers to render any service required of them under the provisions of this act, and when such service is required by a commissioner of highways, it shall not be necessary to pay or tender to such officers their fees for such service. § 4479.

CHAPTER XIV.

MISCELLANEOUS PROVISIONS OF LAW RELATING TO JUSTICES.

2003. May Order Inhabitants to Aid in Extinguishing Fires in Woods or Prairies.—Whenever the woods or prairies in any township shall be on fire, so as to endanger property, it shall be the duty of the justices of the peace, the supervisor, and the commissioners of highways of such township, and each of them, to order such, and so many of the inhabitants of such township, liable to work on the highways, and residing in the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress. § 15425. [See Form No. 73.]

2004. Duty of Justices on Drawing of Petit and Grand Jurors.—Two justices of the peace are to be notified by the county clerk of the time of drawing and at least one of said justices shall attend and certify to the proceedings. See § § 12200 to 12204, C. L. of 1915.

2005. When Justice Shall be Excused from Serving as Juror.—The court to which a justice of the peace shall be returned as a juror, shall excuse such justice when the duties of his office are inconsistent with his attendance as a juror. See § 12208, C. L. of 1915.

2006. Justice May Give Consent for Infants to Bind Themselves as Apprentices, Etc.—Every male infant and every unmarried female under the age of eighteen years, may bind himself or herself to serve as clerk, apprentice or servant, with the consent of two justices of the peace of the township, if such infant have no parent living or none in a legal capacity to give consent and there be no guardian. See § § 11492-93.

2007. Justice Entitled to Copy of Laws.—Act 44 of 1899, Sec. 2 (being § 821, C. L. of 1915), provides that a copy of the public acts of each session of the legislature shall be furnished to each justice of the peace.

2008. When Justice Shall Distribute Books to Township Officers.—In case of vacancy, or inability of the township clerk, his deputy and the

supervisor, the justice of the peace whose term of office first expires, shall perform these duties. See Sec. 1244 of this Guide.

2009. **When Justice May Certify Nomination of Guardian by Minor.**—When a minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the probate court, his nomination of a guardian, made in writing, and signed by himself, may be certified to the judge of probate by a justice of the peace, or by the township clerk of the township in which such minor resides, which shall have the same effect as if made in the presence of the judge. § 13954.

2010. **To View Sheep Killed by Dogs.**—For the provisions of law relative to the viewing of sheep killed by dogs, and the issuing of certificates of amount of damages, see section 1974 of this Guide.

2011. **Jurisdiction Under Motor Vehicle Law.**—All justices of the peace of any township, where any such violation shall occur, shall have jurisdiction to hear, try and pass sentence for any and all violations of any of the provisions of Act 302 of 1915, being § § 4797-4832, C. L. of 1915. See § 4826. See also § § 4793-96, as Am. by Act 181 of 1917, relative to steam engines and steam vehicles on highways.

2012. **Proceeding Before Trial.**—Any constable of any township shall have full power and authority within the limits of their jurisdiction or in any adjoining county to arrest any person known personally to any such officer to have violated any of the provisions of this act (the Motor Vehicle Law), and to immediately bring such offender before any magistrate having jurisdiction, as provided in the preceding section, and any such person so arrested shall have the right of an immediate trial and all other rights given to any person arrested for having committed a misdemeanor; and if such hearing cannot then be had, be released from custody on giving his personal undertaking to appear in answer for such violation, at such time and place as shall then be indicated, secured by the deposit of a sum equal to the maximum fine for the offense with which he is charged, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer; or, in case such officer is not accessible, be forthwith released from custody on giving his name and address to the officer making such arrest, and depositing with such officer a sum equal to the maximum fine for the offense for which such arrest is made, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer; and in such case the officer making such arrest shall give a receipt in writing for such sum or vehicle and notify such person to appear before the most accessible magistrate, naming him, on that or the following day, specifying the place and hour. In case security shall be deposited, as in this subdivision provided, it shall be returned to the person depositing, forthwith on such person being admitted to bail. § 4828.

2013. **Cash in Lieu of Bonds May be Deposited in Justice Courts.**—When, under the laws of this State, any bond is required in an action, or otherwise, in any justice court in this State, it shall be lawful for the party from whom such bond is required to deposit cash in lieu thereof. Such security shall be taken and accepted by the justice of the peace and be forfeited or discharged in the same manner as the bond required. Act 250 of 1917.

PART XVIII.

CONSTABLES.

CHAPTER I.—Election and Qualification of Constables.
CHAPTER II.—General Powers and Duties of Constables.
CHAPTER III.—Service of Civil Process.
CHAPTER IV.—Service of Criminal Process.
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CHAPTER VI.—Duties Relating to the Public Health.
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CHAPTER I.

THE ELECTION AND QUALIFICATION OF CONSTABLES.

2014. Election, Qualification, Term of Office, Etc.—The provisions of law relating to the election, etc., of constables, have been compiled in Parts II and III, devoted to "Township Meetings" and "Township Officers" respectively.

2015. Bond of Constable.—Every person elected or appointed to the office of constable, before he enters upon the duties of his office, and within the time prescribed by law for filing his official oath, shall execute, with sufficient sureties, to be approved by the supervisor or clerk of his township, an instrument in writing by which said constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay on account of any neglect or default of said constable in the service or return of any process that may be delivered to him for service or collection, or on account of any misfeasance of the said constable in the discharge of, or failure of said constable to faithfully perform any of the duties of his said office. § 2144. [See Form No. 156.]

Constables must be elected; it is not competent for the legislature to vest the powers of constables in persons not so chosen.—Abels v. Supervisors, 42 / 526.

2016. Approval and Filing of Bond, Etc.—Such supervisor or township clerk shall endorse on such instrument his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the township clerk, and a copy of such instrument, certified by the township clerk, shall be presumptive evidence of the contents and execution thereof, and all actions against a constable or his sureties, upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected. § 2145.

CHAPTER II.

OF THE GENERAL POWERS AND DUTIES OF CONSTABLES.

2017. Constables to Be Ministerial Officers of Justices.—Constables shall be ministerial officers of justices of the peace, and shall attend upon the sessions of the circuit courts for their respective counties, when notified for that purpose by the sheriff. § 2148.

2018. To Serve, in His County, all Process Directed to Him.—Constables shall serve all warrants, notices, and process lawfully directed to them by the township board, or the township clerk, or any other officer, and shall perform such other duties as are required of them by law. Any constable may serve any writ, process or order lawfully directed to him, in any township in his county. § § 2146-47.

A constable cannot serve process in his own favor.—Morton v. Crane, 39 / 526.

2019. May Require Aid in Service of Process.—Any sheriff, deputy sheriff, coroner or constable, may require suitable aid in the service of process in civil or criminal cases, in preserving the peace, or in apprehending or securing any person for felony or breach of the peace, when such officer may have power to perform such duty; and when any such officer shall find resistance made against the execution of any process, or shall have good reason to believe that such resistance will be made, he may take the power of the county, and proceed therewith in proper person to execute such process. § 12164.

2020. Not to Ask or Receive Reward.—No constable shall ask or receive any money or other valuable thing from a defendant or other person, as a consideration, reward, or inducement for omitting to arrest any delinquent, or to carry him before any justice, or for delaying to take any party to prison, or for postponing the sale of any property under any execution, or for omitting or delaying the execution of any duty pertaining to his office. § 14460.

2021. Not to Buy Note, Etc., for Purpose of Commencing Suit.—No justice of the peace or constable shall, directly or indirectly, buy or be interested in buying, any bond, note, or other demand or cause of action, for the purpose of commencing any suit thereon before a justice; nor shall any justice or constable, either before or after the suit brought, lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money or valuable thing, to any person in consideration of, or as a reward for, or inducement to, the placing or having placed in the hands of such justice or constable, any debt, demand or cause of action whatever, for prosecution or collection. § 14461.

2022. Penalty for Violation of Last Two Sessions.—Every constable, offending against either of the provisions of the two last preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment, in the discretion of the court; and every such conviction shall operate as a forfeiture of the office of the constable so convicted. See § 14463.

2023. Penalties for Violation of Duty in Certain Special Proceedings.—Every sheriff, constable, or other officer, to whom shall be directed

and delivered any attachment, summons, precept to summon a jury, warrant to apprehend a witness or any other person, or any other process authorized to be issued by any judge, circuit court commissioner, or justice of the peace, in any special proceeding or matter before such judge, commissioner, or justice, except civil suits before justices of the peace, shall execute such process as therein commanded, and for any wilful neglect so to do, may be fined by the officer issuing the same, in a sum not exceeding twenty-five dollars. § 12741. When any sheriff, constable, or other officer, who shall have summoned any jury, in the cases mentioned in this section, shall be required by the officer issuing such summons, to attend such jury and take charge of them, he shall be bound to do so; and for any wilful neglect to obey such order, or for any misconduct while attending such jury, by which the rights or remedies of any party to such proceeding may be impaired or prejudiced, such sheriff, constable, or other officer, shall be liable to be fined by the officer before whom such jury shall have appeared, in a sum not exceeding twenty-five dollars. See § 12743.

2024. Constable to Furnish Copy of Process on Demand, Etc.—Any officer or other person who shall refuse or neglect for six hours, to deliver a copy of any order, warrant, process, or other authority, by which he shall detain any person, to any one who shall demand such copy and tender the lawful fees therefor, shall be liable to the person so detained in the sum of two hundred dollars damages. § 13508.

A person who is a mere stranger has a right to a copy.—Drennan v. People, 10 / 185.

2025. What Other Officers May Act as Constables.—Any sheriff, under-sheriff, or deputy sheriff, of any county of this State, may and shall hereafter be fully authorized to serve or execute any and all process, civil or criminal, issued, or which may by law be issued by any justice of the peace, and to have and to exercise all the powers and duties of constables; and for such services they shall be entitled to the same fees as are now or may be allowed by law to constables in like cases. § 2455.

A sheriff or his deputy, under this act, may serve writs and levy executions issued by justices of the peace, directed to "any constable," etc.—Foster v. Wiley, 27 / 244.

2026. Duties of Constable Under Liquor Laws.—The duties of police officers under the prohibitory liquor law will be found compiled in Chapter XII of Part XVII, devoted to "Justices of the Peace."

CHAPTER III.

SERVICE AND RETURN OF CIVIL PROCESS.

2027. Process Not to be Served on Sunday.—No person shall serve or execute any civil process from midnight preceding, to midnight following the said first day of the week; but such service shall be void, and the person serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process. § 12428.

Service of a writ of certiorari to remove a cause from justice's court to the circuit made on Sunday, is void.—Anderson v. Birce, 3 / 280. And also the return of an execution.—Peck v. Cavell, 16 / 11.

2028. Service of Summons.—A summons shall in all cases, except as hereinafter otherwise provided, be served at least six days before the time of appearance mentioned therein, and if the defendant be found, it shall be served by delivering to him a copy thereof. But if the defendant shall not be found it shall be served by leaving a copy thereof at the defendant's last place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of its contents. Such summons may be served by any competent person, and proof thereof by such person, by affidavit filed in the cause, shall have the same effect as if served by any constable. § 14186.

If the plaintiff shall be a non-resident of the county a summons may be made returnable not less than two nor more than six days from the date thereof, and shall be served at least two days before the time of appearance mentioned therein. § 14190.

If the defendant is a non-resident of the county, a summons shall be made returnable and be served, as prescribed by the preceding section. § 14191. As to the return of a summons, see Sec. 2039. [See Forms Nos. 157-160.]

A justice's summons returnable not less than two days from its date is defective if made returnable on the second day after it was issued.—Everts v. Fisk, 44 / 515.

2029. Proceedings Against Garnishees.—The summons shall be served and returned in the same manner as a summons issued against a defendant in other cases. See § 14361.

2030. Service of Process on Corporations.—The first process against a corporation shall be a summons, and shall be served by leaving a copy thereof with the president, cashier, secretary, treasurer or any other officer or agent of such corporation, or by leaving such copy at the banking house or office of such corporation. § 14196. [See Form No. 160.]

In the several statutes providing for the organization of particular corporations, such as railroad companies, mining companies, insurance companies, etc., special provisions are made for the service of process upon such companies. Should such service ever be required of a constable, he may readily find such provisions by reference to Compiled Laws of 1915.

It is not necessary that service should be in the county in which is the principal office of the corporation, but service on its president in the county in which plaintiff resides is sufficient.—Potter v. John Hutchinson Manufacturing Co., 44 / 595.

2031. Service of Process on Banks.—Legal process against any bank shall be served upon its president or cashier or treasurer in the county where its business office is located or the plaintiff resides, or by leaving any attested copy at its banking house during banking hours with the teller, clerk or any officer of the bank. § 12432.

2032. Service of Process Upon Waters Bordering on This State.—All civil process from either of the counties now organized or that may be hereafter organized upon the shores of Lakes Erie, St. Clair, Huron, Superior or Michigan, may run into and be executed within and upon that part of such lake or lakes which lies within the limits of this State. See § 12431.

Warrants.

2033. Service of Civil Warrants.—A warrant shall be served by arresting the defendant, and bringing him forthwith before the justice issuing the same; but if such justice, on the return thereof, shall be absent or unable to hear or try the cause, or if it shall appear by the affidavit of the defendant that such justice is a material witness in his behalf on the

trial of the cause, the constable shall take the defendant before some other justice of the same township or city, if there be one therein qualified to try the same, and if not, then before some justice of an adjoining township or city, who shall take cognizance of the cause, and proceed thereon, as if the warrant had been issued by him. § 14328. [See Forms Nos. 161, 162 and 163.]

2034. Constable to Have Custody of Defendant.—If a cause commenced by warrant be adjourned on the application of the defendant, he shall continue during the time of adjournment in the custody of the constable, unless he shall give bond to the plaintiff in the sum of two hundred dollars, with sufficient surety or sureties, to be approved by the justice. See § 14330, C. L. of 1915.

2035. Exemptions from Arrest on Civil Process.—The following exemptions from arrest on civil process, are made by law:

By U. S. Const., I, 6, senators and representatives are exempt from arrest on civil process during the sessions of their respective houses, and in going to and returning from the same.

By Mich. Const., V, 8, senators and representatives during legislative sessions and for fifteen days next before and after such sessions.

No officer of the senate or house of representatives, while in actual attendance upon the duties of his office, shall be liable to arrest on civil process. § 12443.

During the day on which any election shall be held, pursuant to the provisions of law, no civil process shall be served on any elector entitled to vote at such election. § 12428.

All officers of the several courts of records shall be liable to arrest, and may be held to bail in the same manner as other persons, except during the actual sitting of any court of which they are officers; and when sued with any other person, such officers shall be liable to arrest, and may be held to bail as any other persons, during the sitting of the court of which they are officers, but no attorney, solicitor or counsellor shall be exempt from arrest during the sitting of the court of which he is an officer, unless he shall be employed in some cause pending and then to be heard in such court. § 12446.

Every person duly and in good faith subpoenaed as a witness to attend any court, officer, commissioner, auditors or referees, or summoned to attend any judge, officer or commissioner, in any case where the attendance of such witness may by law be enforced by attachment, or by warrant, shall be exonerated from arrest in any civil suit, while going to the place where he shall be required to attend, while remaining in attendance as such witness, and while returning therefrom. § 12446.

2036. What Arrests Void.—Every arrest of a witness made contrary to the foregoing provisions, shall be absolutely void, and shall be deemed a contempt of the court issuing the subpœna; and every person making or procuring such arrest, shall be responsible to the witness arrested for three times the amount of damages which shall be found by the jury, and shall also be liable to an action at the suit of the party who subpœnaed such witness, for the loss, hindrance and damage sustained by him, in consequence of such arrest. § 12447.

2037. When Officer Not Liable.—But no sheriff or other officer, or person, shall be so liable, unless the person claiming an exemption from

arrest, shall, if required by such sheriff or officer, make an affidavit, stating:

1. That he has been legally subpoenaed as a wtiness, to attend before some court, officer, auditors, referees or commissioners, specifying such court, officer, auditors, referees or commissioners, the place of attendance, and the cause in which he shall have been subpoenaed; and,

2. That he has not been subpoenaed by his own procurement, with intent to avoid the service of any process.

Which affidavit may be taken by such officer, and when so taken, shall exonerate such officer from all liability for not making such arrest. § 12448.

2038. Female Not to be Imprisoned in Civil Action.—No female shall be imprisoned on any process in any civil action. § 12445, C. L. of 1915.

2039. Return of Civil Process.—The constable serving a summons, warrant, attachment, or other process, shall return thereon, in writing, signed by him, the time and manner of executing the same; and in case of a warrant, he shall in such return state the fact whether he has or has not notified the plaintiff. § 14198. [See Forms Nos. 157-163 and 168-173]

Attachment.

2040. When and How Attachment to be Served.—The constable serving such attachment shall execute the same at least six days before the return thereof, by seizing so much of the goods and chattels of the defendant, within his county, as shall be sufficient to satisfy the demand and costs, and making an inventory thereof, and serving a copy of such attachment and inventory upon the defendant, if he can be found within the county. If the defendant cannot be found within the county, the constable shall leave a copy of the attachment and inventory certified by him at the last place of residence of the defendant, if there be any such place within the county, and if not, then by leaving the same with any person in whose possession such goods and chattels, moneys and effects may be found, or in case garnishee proceedings shall be commenced simultaneously with the issuing of said writ, and no goods, chattels, or effects shall be found on which to levy such writ, then by leaving a certified copy of said writ with such garnishee defendant. § § 14340-41. [See Forms Nos. 164 and 168-170.]

An officer will be protected in the service of an attachment regular on its face and appearing to be issued by a justice having jurisdiction of the subject matter.—Michels v. Stork, 44 / 4. But if there is doubt as to the ownership of the property to be seized, he may require indemnity.—Smith v. Cicotte, 11 / 383. If the defendant is not found, the return must show that the officer retained the writ in his hands and made diligent search for the defendant, during the whole time within which personal service might be lawfully made, and must be so made as to enable the justice to see that the officer has complied with the statute in making service, or in his efforts to make it.—Brown v. Williams, 39 / 755.

2041. What Property Constable May Seize.—A writ of attachment commands the constable to attach so much of the goods and chattels of the defendant, except such as are exempt by law from execution, as will satisfy the plaintiff's demand. See § 14339, C. L. of 1915. As to exemptions from execution, see Sec. 2060 of this Guide.

2042. Sale of Goods in Case Attachment Not Personally Served.—In all cases where the attachment shall not have been personally served, and the defendant shall not have appeared in the suit, judgment shall be rendered and execution may be issued in the same form as if such attach-

ment had been personally served; but such judgment shall not be conclusive except as to the property attached, and such execution shall only authorize the officer to whom it is directed to sell the property attached in such suit. § 14357.

2043. Bond for Goods Attached.—No goods or chattels attached shall be removed by the constable, if a bond be executed or delivered to him by any person, with sufficient surety to be approved by such constable, in a penalty at least double the sum stated in the attachment to have been sworn to, conditioned that such goods and chattels shall be produced to satisfy any execution that may be issued on any judgment that shall be recovered by the plaintiff upon such attachment; and thereupon the officer shall deliver the property attached to the person executing such bond. § 14342. [See Form No. 165.]

2044. Bond by Other Than the Defendant.—If any person other than the defendant shall claim any goods or chattels attached by a constable, he may, after such seizure, and at any time before execution shall have been issued upon the judgment obtained on such attachment, execute a bond to the plaintiff with sufficient sureties, to be approved by the constable or by the justice who issued the attachment, in a penalty double the value of the property attached, conditioned that in a suit to be brought on such bond, within three months from the date thereof, such claimant will establish that he was the owner of the goods seized at the time of the seizure, and in case of his failure to do so, that he will pay such plaintiff the value of the property so attached, with interest. § 14343. [See Form No. 166.]

2045. When Constable to Deliver Property to Obligor.—Upon either of the bonds aforesaid being executed and delivered to the constable, he shall deliver up the property seized by him to the obligor in such bond. § 14344.

2046. May Administer Oath to Sureties.—Whenever any officer is authorized to take any sureties or bail, he shall be authorized to administer an oath to every person who shall be offered as such bail or surety, to ascertain his sufficiency. § 12738.

2047. Return of Inventory and Bond.—In case of an attachment, the officer shall also return a copy of the inventory of the property attached, certified by him, and any bond which may have been executed and delivered to him pursuant to the foregoing provisions. § 14353. [See Forms Nos. 167-169.] See Sec. 2039 of this Guide.

2048. Service of Attachment Under Labor Lien Law.—All writs of attachment issued under the provisions of this act by any of the circuit or justice courts of this State shall be served and returned as ordinary writs of attachment are served and returned in said courts, respectively, except as herein otherwise provided. § 14353.

Replevin.

2049. When Writ of Replevin to be Served.—Such writ shall be returnable not less than six, nor more than twelve days from the date of the same, and shall be served not less than six days before the return thereof. § 14333.

2050. Chapters Governing Proceedings in Replevin.—It is provided that in all cases not specially provided for in Chap. LXXIV of the Judicature Act, being § § 14332-36, C. L. of 1915, proceedings in replevin before a justice shall be governed by Chap. XXVII of the Judicature Act, being § § 13080-13121, C. L. of 1915. See Sec. § 14336.

2051. Seizure of Property Replevied.—By § 13085, applicable as above indicated, the constable may proceed to seize and take into his custody the property described therein, and for that purpose may break open any house, stable, out-house or other building in which such property may be concealed, having first demanded deliverance thereof at the building or place where the same is concealed.

An action of trespass will not lie against a constable for unlocking a door and entering plaintiff's house to serve a writ of replevin on household furniture, where the constable first asked admittance for the purpose of serving the writ.—Rentschler v. Fox, 130 / 498.

2052. How Defendant to be Summoned.—The officer shall summon the defendant according to the command of the writ, by delivering to him personally a certified copy of such writ, if such defendant can be found; and if he cannot be found, then by leaving such certified copy at his usual place of abode, with some person of proper age. § 13089.

2053. Return of Writ of Replevin.—The constable shall return the writ at or before the return day thereof, and he shall state in his return in what manner he executed the writ; and if the goods and chattels specified therein shall not have been replevied, he shall state in his return the cause thereof. § 13091. [See Form No. 171.]

Executions.

2054. Service of Execution Against Property.—Upon any judgment being rendered before a justice of the peace, he shall issue execution thereon, if requested, at the time and in the manner hereinafter prescribed, which shall be dated on the day when it actually issued, and be made returnable in sixty days thereafter. Such execution shall be directed to any constable of the same county, and shall command him, in the name of the people of the State of Michigan, to levy the debt or damages, with interest and costs, of the goods and chattels of the person or persons against whom the same shall be issued excepting such goods and chattels as are by law exempted from execution, and bring the money before such justice, at the time and place therein to be mentioned, to render to the party who recovered the same. § § 14288-89.

An agreement between a constable and a judgment creditor for the payment of a sum in excess of the statutory fees allowed for serving an execution, is void as against public policy; nor can such officer evade the statute by recovering on a quantum meruit.—Wilcoxson v. Andrews, 66 / 553.

2055. Sale of Property When Attachment Not Personally Served.—An execution issued after judgment in cases of attachment where the attachment was not personally served and the defendant did not appear, shall only authorize the officer to whom it is directed to sell the property attached. See Section 2042 of this Guide.

2056. Execution Against Joint Debtors, Etc.—When a judgment shall be obtained against joint debtors, upon process which was not personally served upon all the defendants, execution may be issued in form against all; but the justice shall indorse thereon the names of such of

the defendants who did not appear in the suit, as were not personally served with process of warrant, summons or attachment. Such execution shall not be served upon the persons of the defendants whose names are indorsed thereon; nor shall it be levied upon the sole property of any such defendant, who neither appeared in the suit nor was personally served with such process; but it may be collected of the several property of any defendant who appeared or was served personally with process, or of the joint or copartnership property of all the defendants. § § 14298-99.

2057. **In Case Any of Defendants are Sureties.**—Whenever it appears from the docket, or on the trial, that any of the defendants are sureties, the justice shall note the same on the execution; and it is the duty of the officer executing the same, first, to levy on the goods of the principal, and if enough of such goods can be found to satisfy the execution, no levy shall be made on the goods of the surety. § 14302.

2058. **Property of Principal Debtor to be First Exhausted.**—Every officer having an execution in his hands for collection, upon an affidavit being served upon him, made by any co-defendant in such execution, his agent or attorney, showing the principal debtor therein, shall first exhaust all the personal estate of said principal debtor, which may be turned out by any one of the defendants, before selling the property of any other defendant who may be surety in the demand upon which the judgment was rendered. § 14303.

2059. **When Constable May Require Indemnity.**—Whenever there is any reasonable doubt as to the ownership by a judgment debtor of any goods or chattels, or as to their liability to be taken upon an execution, the officer holding such execution may require of the judgment creditor sufficient security to indemnify him for taking such goods and chattels thereon; and if such security be refused, such officer shall not be liable for omitting to take such goods or chattels. § 12833. [See Form No. 174.]

An officer is entitled to indemnity before levying an attachment, under the same circumstances as when required to levy execution.—Smith v. Cicotte, 11 / 383. An officer, although indemnified, is not bound to levy, if in good faith he believes such levy would be illegal and can maintain its illegality when sued upon his bond.—Coville v. Bentley, 76 / 248. The defense that there was no property to be found liable to seizure belonging to the judgment debtor is always open to an officer, whether indemnified or not, and is a good excuse for a refusal or neglect to make a levy.—Id. The fact that a constable has demanded and accepted an indemnity bond does not estop him from making the defense to an action on his bond for failure to make the levy that the property of the debtor was exempt.—Id.

2060. **Exemptions From Levy and Sale on Execution.**—The following property shall be exempt from levy and sale under any execution, or upon any other final process of a court:

First, All sewing machines, not exceeding one for each family, spinning-wheels, weaving-looms with the apparatus, and stoves put up and kept for use in any dwelling-house;

Second, A seat, pew, or slip, occupied by such person or family, in any house or place of public worship;

Third, All cemeteries, tombs, and rights of burial, while in use as repositories of the dead;

Fourth, All arms and accoutrements required by law to be kept by any person; all wearing apparel of every person or family;

Fifth, The library and school books of every individual and family, not exceeding one hundred and fifty dollars, and all family pictures;

Sixth, To each householder, ten sheep, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, and provisions and fuel for comfortable subsistence of such householder or family for six months;

Seventh, To each householder, all household goods, furniture, and utensils, not exceeding in value two hundred and fifty dollars;

Eighth, The tools, implements, materials, stock, apparatus, team, vehicle, horses, harness, or other things, to enable any person to carry on the profession, trade, occupation, or business in which he is wholly or principally engaged, not exceeding in value two hundred and fifty dollars;

The word team in this subdivision shall be construed to mean either one yoke of oxen, a horse, or a pair of horses, as the case may be.

Ninth, A sufficient quantity of hay, grain, feed, and roots, whether growing or otherwise, for properly keeping for six months the animals in the several subdivisions of this section exempted from execution; and any chattel mortgage, bill of sale, or other lien created on any part of property above described, except such as is mentioned in the eighth subdivision of this section, shall be void, unless such mortgage, bill of sale, or lien be signed by the wife (if he have any) of the party making such mortgage or lien. § 12858.

The property exempted in the eighth subdivision above shall not be exempt from any execution issued upon a judgment rendered for the purchase money for the same property, and any sale of such property after the commencement of a suit to recover the purchase price thereof, and the filing of the notice hereinafter required, shall be null and void as against such an execution. See § 12859.

2061. Appraisal and Selection of Property Exempt.—When a levy shall be made upon property of any class or species which is exempt by law from execution to a specified amount or value, the officer levying such execution may make an inventory of the whole of such property belonging to the person against whom the execution shall be issued, and cause the same to be appraised at its cash value, by two disinterested freeholders of the township where the property may be, on oath, to be administered by him to such appraisers. Upon such inventory and appraisal being completed, the defendant in execution, or his authorized agent, may select from such inventory an amount of such property not exceeding, according to such appraisal, the amount or value exempted by law from execution; but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same for him. The appraisers mentioned above shall be entitled to fifty cents each for their services, and six cents per mile for traveling, in going only, for which the plaintiff in the execution shall be liable to them, and the amount of their travel and fees shall be collected upon the execution. Whenever the defendant in an execution shall have cows, sheep, swine, or other animals or articles, some of which are exempt by law from sale on execution, and some of which are not so exempt, the officer may take all of such horses, cows, sheep, swine, or other animals or articles into his possession, and the defendant or his authorized agent may, immediately on being notified of the levy, select so many thereof as are exempt by law from execution, but if the defendant be absent, or neglect to make

such selection on being notified, the officer shall make the same for him. § § 12861-64. [See Forms Nos. 175-177.]

2062. **Indorsement on Execution After Levy and Notice of Sale.**—The constable, after taking goods and chattels into custody by virtue of an execution, shall indorse thereon the time of levying the same, and immediately give public notice by advertisement signed by himself and put up at three public places in the city, village or township where such goods and chattels were levied upon, and in case the sale be made in any other city, village or township than that in which the levy was made, also in the city, village or township where said goods and chattels are to be sold, when and where they will be exposed for sale; and the said officer shall in no case remove said goods and chattels out of the county where said levy shall have been made. Such notice shall describe the goods and chattels, and shall contain the names of the parties to the suit upon which the execution issued, and shall be put up at least five days before the time appointed for the sale. § § 14304-05. [See Forms Nos. 178 and 179.]

2063. **Sale of Goods and Chattels.**—At the time and place so appointed, or at such other time as the sale may be adjourned to, within the life of the execution, the goods and chattels being present, and pointed out to the inspection and examination of the bidders, the constable shall expose them to sale at vendue to the highest bidder. § 14306.

The property sold must be present and in view of the bidders.—Baker v. Casey, 19 / 220. But a sale made a few rods distant but in plain sight from the place appointed in the notice, will be good.—Perkins v. Spaulding, 2 / 160-1. A sale of a growing crop at such a distance from the field that the crop could not be seen, is invalid.—Winfield v. Adams, 34 / 427. It is the duty of the officer to sell the property in such lots or parcels as to command the highest price. For this purpose he has a large discretion, and is not required to sell each particular article separately.—Perkins v. Spaulding, 2 / 160. But he can sell so much property only as is sufficient to satisfy the execution, costs and expenses.—Allen v. Kinyon, 41 / 281. If the sale is of the debtor's interest in property covered by a chattel mortgage, the whole of the mortgaged property must be sold together in one lot subject to the mortgage.—Balwin v. Talbot, 46 / 21. If the execution debtor has only a limited or special interest in the property levied on, it is the officer's duty to declare that fact, and by express words confine the sale to such right, title and interest as the debtor may really possess.—Eggleston v. Mundy, 4 / 303. A constable is not authorized by law to receive anything but legal tender money in satisfaction of an execution. If he does, it is at his own peril.—People v. Commissioners, etc., 19 / 470.

2064. **Return of Execution, Etc.**—The constable shall return the execution, and pay the debt or damages, and costs levied, to the justice who issued the same; or in case of his death, absence, or removal from office, then to the justice having the custody of his docket, returning the surplus, if any, to the person against whom the execution issued. § 14307. [See Forms Nos. 180, 181 and 182.]

2065. **Completion of Service After Return Day.**—When an officer shall have begun to serve an execution issued out of any justice court, on or before the return day of such execution, he may complete the service and return thereof after such return day. § 14308. [See Form No. 183.]

2066. **When Not to Levy, Etc.**—No constable shall levy upon or sell any property or imprison a defendant, upon any execution, after the time limited therein for its return, except as is provided in the preceding section. § 14309.

2067. **Allowance for the Keeping of Live Stock.**—When any cattle or other live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty

of collecting the judgment whereon such execution issued, to allow the constable for keeping the same a reasonable compensation to be taxed and collected as other costs in the suit. § 14310.

2068. **Constable Not to Purchase at Sale.**—No constable shall directly or indirectly, purchase any goods or chattels, upon any sale made by him upon execution; and every such purchase shall be absolutely void. § 14313.

2069. **When to Take Body of Defendant.**—For want of sufficient goods and chattels whereon to levy, the constable shall, in the cases authorized by law, if the execution require it, take the body of the person against whom the execution shall have issued, and convey him to the common jail of the county, the keeper whereof is hereby required to keep such person in safe custody in jail until the debt or damages and costs shall be paid, or he be thence discharged by due course of law: Provided, That § 13027, C. L. of 1915, shall be applicable in such case. § 14314. [See Forms Nos. 184 and 185.]

2070. **In Case of Neglect of Duty by Constables.**—If a constable shall neglect or refuse to return an execution and pay over the moneys by him collected, within five days after such execution shall have been paid, or shall neglect to levy an execution, or otherwise execute the same according to law, the party in whose favor such execution was issued, or who shall be entitled to such moneys, may maintain an action of assumpsit, in his own name, upon the instrument of security given by such constable and his sureties; and in such suit the amount of the execution, with interest from the time of the rendition of the judgment upon which the same was issued, shall be recovered; and execution shall issue forthwith. § 14315.

2071. **May Proceed on Execution After Expiration of His Term.**—Every constable to whom any execution shall have been delivered, and whose term of office shall expire before the time within which the return or collection of such execution is required by law, shall proceed thereon in the same manner, and shall have the same powers in relation thereto, as if his term of office had not expired; and such constable and his sureties shall be liable for any neglect of duty, and for moneys collected upon such execution, in the same manner and to the same extent as if the term of office of such constable had not expired. § 14316.

2072. **In Case of Death or Disability of Constable.**—If any constable to whom any execution shall have been delivered shall die, become insane, or, by sickness or otherwise, be incapable of completing the service and return thereof, before such writ shall have been fully executed, any other constable may proceed thereon in the same manner that the constable to whom such writ was originally delivered might have done. § 14317.

2073. **How Executions May be Set Off, One Against Another.**—Executions between the same parties, upon judgments recovered in their own right, may be set off, one against another, if required by either party, in the following manner: When one of the executions is delivered to a constable to be served, the person who is the debtor therein may deliver his execution to the same constable, and such constable shall apply the amount thereof, so far as it will extend, or so far as may be necessary, to the satisfaction of the first execution; and the balance due on the larger

execution shall be collected and paid in the same manner as if there had been no set off. § 14318. [See Form No. 186.]

2074. **Levy on Peaches, Berries or Other Perishable Property.**—Whenever any constable shall, by virtue of any attachment or execution, issued by any justice of the peace, levy upon any peaches, blackberries, raspberries, strawberries, or other perishable property, he shall forthwith make his return to said justice, who by a written order shall authorize the constable to sell said property at such time, place, and manner as said justice shall deem most beneficial for the benefit of the defendant. § 14311. [See Forms Nos. 187, 188 and 189.]

2075. **When Service May be Completed After Return Day.**—When an officer shall have begun to serve an execution issued out of any court of record, on or before the return day of such execution, he may complete the service and return thereof after such return day. § 12837.

2076. **Additional Powers and Duties Relating to Writ of Execution.**—The officer serving a writ of execution on judgment will find various duties and methods of procedure in certain cases more specifically expressed in Chapter LXXVII, C. L. 1915, which it is thought unnecessary to compile in this work.

2077. **Service of Subpoena.**—A subpoena may be served either by a constable or any other person, and it shall be served by reading the same, or stating the contents, to the witness, and by paying or tendering the fees allowed by law for traveling, and one-half day's attendance. § 14242. In cases of adjustment of fire losses, subpoena may be served by delivering a copy thereof, and by paying or tendering legal fees. See § 9559. [See Forms Nos. 172 and 173.]

2078. **Constable May Serve Process Issued by Judge of Probate.**—All sheriffs, deputy sheriffs, coroners and constables, shall serve and execute all legal warrants and processes to them directed by any judge of probate. § 13765.

2079. **Service of Process for Forcible Entry or Detainer.**—The constable to whom a warrant in such case shall be delivered, shall execute the same by arresting the defendant, and bringing him forthwith before the officer issuing such warrant, and shall thereupon notify the complainant of such arrest. § 13233.

In case the trial is adjourned, the defendant shall remain in the custody of the officer, unless he shall give a bond as required by law. See § 13248.

A summons in summary proceedings to recover possession of land, shall be served at least two days before the time of appearance mentioned therein, by delivering to the defendant, if to be found within the county, a copy thereof, but if the defendant shall not be found it shall be served by leaving such copy at the usual place of abode of such defendant, in the presence of some person of suitable age who shall be informed of its contents. § 13243.

CHAPTER IV.

OF THE SERVICE OF CRIMINAL PROCESS BY CONSTABLES.

2080. **Service of Process Within His County.**—Any constable may serve any writ, process or order lawfully directed to him, in any township

in his county. § 2147. [See Forms Nos. 190, 191 and 192.] See also Sec. 2017 of this Guide.

A constable is not vested with official character when acting in a county to which he does not belong.—People v. Burt, 51 / 199. An arrest for breach of the peace cannot be made without a warrant if not committed in the presence of the officer making it.—People v. Haley, 48 / 496. An arrest cannot be made without a warrant on causeless suspicion, and in the absence of actual belief of guilt, based on actual facts that create probable cause.—Id. An officer of justice is bound to know the law, and if he makes an arrest which the facts on which he proceeds would not justify, if true, he is a wrong doer.—Malcolmson v. Scott, 56 / 460. The arrest of a person for a misdemeanor, after the commission of the act, cannot be made without a proper warrant.—People v. McLean, 68 / 480. Good faith does not excuse an unauthorized arrest.—Linnen v. Banfield, 114 / 93.

2081. When Constable May Serve Warrant in Other County.—If any person against whom a warrant shall be issued for an alleged criminal offense, not cognizable by a justice of the peace, and committed within any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county of this State, and for that purpose may command aid, and may exercise the same authority as in his own county. § 15668. [See Forms Nos. 190, 191 and 192.]

2082. Disposition of Prisoner Arrested in Another County.—In all cases where the offense charged in the warrant is not punishable with death, or imprisonment in the state prison, and not cognizable by a justice of the peace, if the arrest shall be made in any other county than that where the offense is charged to have been committed, and if the person arrested shall request that he may be brought before a magistrate of the county in which the arrest was made, it shall be the duty of the officer or person arresting him, to carry such prisoner before a magistrate of that county. § 15669.

Such magistrate may take from the person arrested, a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offense, and next to be held in the county where the offense shall be alleged to have been committed, and the party arrested shall thereupon be liberated. § 15670.

Such magistrate shall certify on the warrant, the fact of his having let the defendant to bail, and shall deliver the same, together with the recognizance taken by him, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear. § 15671.

If such magistrate refuse to let to bail the person so arrested and brought before him, or if no sufficient bail be offered, or the offense be not bailable by such magistrate, or not cognizable by a justice of the peace, the person having him in charge shall take him before the magistrate who issued the warrant, or before some other magistrate of the same county, as in the next section prescribed. § 15672. [See Forms Nos. 190, 191 and 192.]

2083. Before Whom Person Arrested to be Taken.—Persons arrested under any warrant issued for any offense not cognizable by a justice of the peace, shall, where no provision is otherwise made, be brought before the magistrate who issued the warrant; or if he be absent, or unable to attend, before some other magistrate of the same county; and the warrant, with a proper return thereon, signed by the person who made the

arrest, shall be delivered to the magistrate. § 15673. [See Forms Nos. 190, 191 and 192.]

2084. Judgments of Justice Courts in Criminal Cases, How Executed.—The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant under the hand of the justice who held the court, to be directed to such officers, and specifying the particulars of such judgment. § 15788.

2085. Search Warrants, How Served, Etc.—All search warrants shall be directed to the sheriff or any constable of the county, commanding such officer to search, in the day time, the house or place where the stolen property, or other things for which he is required to search, are believed to be concealed, which place, and the property or things to be searched for, shall be designated and described in the warrant, and to bring such property or other things before the magistrate issuing the warrant. § 15881.

If there be positive proof that any property, stolen or embezzled, is concealed in any particular house or place, or that any such other things are then in any particular house or place, the warrant may authorize the searching of such house or place in the night-time. § 15882. [See Form No. 193.]

2086. Disposition of Property Seized on Search Warrant.—When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any of the other things for which a search warrant is allowed by the provisions of this chapter (Chap. 270, C. L., 1915), all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced or used as evidence on any trial; and as soon as may be afterwards, all such stolen or embezzled property, shall be restored to the owner thereof, and all the other things seized by virtue of any such warrant, shall be destroyed under the direction of the court or magistrate. § 15883.

As to the issuance of a search warrant upon complaint under an "act to provide a penalty for cruelty to children," see § 15230.

2087. Further Powers and Duties of Constables.—It is hereby made the duty of all constables to assist any agent in the lawful performance of his duty relative to the prevention of cruelty to children, as authorized. § 11205.

2088. Authority of Constables Under Motor Vehicle Law.—Any constable of any township, shall have full power and authority within the limits of their jurisdiction or in any adjoining county, to arrest any person known personally to any such officer to have violated any of the provisions of this act, and to immediately bring such offender before any magistrate having jurisdiction, as provided in section 2011, and any such person so arrested shall have the right of an immediate trial and all other rights given to any person arrested for having committed a misdemeanor; and if such hearing cannot then be had, be released from custody on giving his personal undertaking to appear in answer for such violation, at such time and place as shall then be indicated, secured by the deposit of a sum equal to the maximum fine for the offense with which

he is charged, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer; or, in case such officer is not accessible, be forthwith released from custody on giving his name and address to the officer making such arrest, and depositing with such officer a sum equal to the maximum fine for the offense for which such arrest is made, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer; and in such case the officer making such arrest shall give a receipt in writing for such sum or vehicle and notify such person to appear before the most accessible magistrate, naming him, on that or the following day, specifying the place and hour. In case security shall be deposited, as in this subdivision provided, it shall be returned to the person depositing, forthwith on such person being admitted to bail. § 4837.

CHAPTER V.

OF THE SUMMONING OF JURORS.

2089. Making List and Serving of Venire.—Whenever a jury is to be drawn in a justice court, such justice shall direct some disinterested constable, or other proper person of the county, to write down a list of names of eighteen inhabitants of the county qualified to serve as jurors in courts of record, who shall be in no wise of kin to the plaintiff or defendant, nor interested in such suit. The constable or other person directed to make such list, shall, before making the same, be sworn by the justice to select such persons according to his best judgment, and without favor or partiality to either party. The venire shall be directed to any constable of the county, requiring him to summon the six persons whose names shall remain upon the list, to appear at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such venire; and the constable shall serve such venire personally on each juror named therein, if to be found within his county. See § § 14253-55. [See Form No. 194.]

2090. Summoning of Talesmen.—If any of the jurors named in the venire shall not be found, or shall fail to appear according to the summons, or if there shall be any legal objection to any one who shall appear, it shall be the duty of the constable, on being thereunto directed by the justice, to summon a sufficient number of talesmen to supply the deficiency. § 14257.

2091. Constable to Have Charge of Jury.—After hearing the proofs and allegations, the jury shall be kept together in some convenient place, under the charge of a constable, until they shall agree upon their verdict, and for that purpose the justice shall administer to such constable the oath required by law. See § 14269.

2092. Exemptions From Jury Duty.—Constables are exempt from serving on jury. For other exemptions in full, see Sec. 1166 of this Guide. It is unlawful for any officer to exclude or fail to summon any citizen as a juror on account of race or color. See Sec. 1168 of this Guide.

2093. Special Proceedings in Summoning Jurors.—The method of procedure in the summoning of a jury in proceedings instituted by a railroad company to acquire title to lands, etc., is pointed out in § 8254. On

similar proceedings to acquire title to lands for schoolhouse site, in § 5717.

The court may order any constable to summon a jury in cases of persons aggrieved by the action of the board of supervisors relating to highways. See Sec. 1961 of this Guide.

CHAPTER VI.

OF THE DUTIES OF CONSTABLES RELATING TO PUBLIC HEALTH.

2094. Removal of Nuisance.—Constables are required, on the issue of a warrant by a justice of the peace, to proceed with sufficient aid and accompanied by two or more members of the board of health, to remove certain nuisances, etc. [See Form No. 195.] See Sec. 814 of this Guide.

2095. Removal of Infected Person.—Any two justices of the peace may issue a warrant requiring any constable, under the direction of the board of health, to remove persons infected with contagious diseases, etc. [See Form No. 196.] See Sec. 826 of this Guide.

CHAPTER VII.

PENALTIES FOR NEGLECT OF DUTY, FALSELY ASSUMING TO BE A CONSTABLE OR OBSTRUCTING CONSTABLE, ETC.

2096. Neglect or Refusal to Serve Criminal Process.—If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offense, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars. § 14986.

2097. Penalty for Omitting Duty for Reward.—If any sheriff, coroner, constable, or other officer authorized to serve legal process, shall receive from a defendant or from any other person any money or other valuable thing, as a consideration, reward, or inducement for omitting or delaying to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars. § 14992.

2098. Neglect or Refusal to Perform Official Duty.—Whenever any constable, marshal, deputy or assistant marshal, coroner, sheriff, or deputy sheriff of any town, city, village, or county shall at any time wilfully neglect or refuse to execute any lawful process of any court or judicial officer having authority to issue the same, and which shall be duly issued, or whenever such officer shall, at any time, wilfully neglect or refuse to discharge or execute any special duty imposed on any such officer by any provision of law, such officer shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof in any court of competent jurisdiction. to a fine of not less than twenty dollars; and on a second convic-

tion he shall be adjudged to have forfeited his office, and to pay a fine of not less than fifty dollars. But in all cases where such process shall be sued out in the name of a party other than the people of this State, it shall appear on the trial for such offense that the legal fees for serving such process have been tendered or paid to such officer. § 14999.

2099. Conniving at Escape of Prisoner, Etc.—Every sheriff, or other officer, who shall demand or receive any reward, gratuity, or valuable thing, to procure, assist, connive at or permit any escape of any prisoner in his custody, shall be deemed guilty of a misdemeanor. § 13025.

2100. Penalty for Violation of Above Section.—Every sheriff or other officer who shall be convicted of a violation of the last section, shall forfeit his office, and shall be forever thereafter incapable of executing the same. § 13026.

2101. Penalty for Obstructing or Resisting Constable.—If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, coroner, township treasurer, constable or other officer or person duly authorized, in serving or attempting to serve or execute any process, rule, or order, made or issued by lawful authority, or shall resist any officer in the execution of any ordinance, by-law, or any rule, order, or resolution made, issued, or passed by the common council of any city, board of trustees or common council or village council of any incorporated village, or township board of any township, or shall assault, beat, or wound any sheriff, coroner, township treasurer, constable, or other officer duly authorized, while serving or attempting to serve or execute any such process, rule or order, or for having served or attempted to serve or execute the same, or shall so obstruct, resist, oppose, assault, beat, or wound any of the above named officers, or any other person or persons authorized by law to maintain and preserve the peace, in their lawful acts, attempts, and efforts to maintain, preserve, and keep the peace, every person so offending shall, on conviction thereof, be punished by imprisonment in the state prison not more than two years, or by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars. § 14994.

2102. Refusal to Aid Constable, Etc.—If any person being required by any sheriff, deputy sheriff, coroner or constable, shall neglect or refuse to assist him in the execution of his office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested upon civil process, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars. § 14987.

2103. Falsely Assuming to be Constable, Etc.—If any person shall falsely assume or pretend to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take upon himself to act as such, or to require any person to aid and assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner, or constable, or shall falsely take upon himself to act or officiate in any office or place of authority, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four hundred dollars. § 14989.

2104. Neglect, Etc., to Pay Over Money to Person Entitled Thereto.—If any constable, justice of the peace, or any other officer, shall collect or receive in such capacity any money belonging to another and shall neglect or refuse to pay the same to the person entitled thereto, within a reasonable time after demand thereof, the person so neglecting or refusing shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four times the amount of money so received, or both, at the discretion of the court. § 15311.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS OF LAW RELATING TO CONSTABLES.

2105. Sale of Unclaimed Property.—Upon receiving from a justice an inventory of unclaimed property, with an order annexed for the sale of the same, it shall be the duty of the constable to give ten days' notice of the sale, by posting up written notices thereof in three public places in the city or township, and to sell such property at public auction for the highest price he can obtain therefor. See § § 7437-38. Upon completing the sale, the constable making the same shall endorse upon the order aforesaid a return of his proceedings upon such order, and deliver the same to such justice, together with the inventory, and the proceeds of the sale, after deducting his fees, which shall be the same as upon an execution. § 7439. [See Forms Nos. 197 and 198.]

2106. Prosecutions for Cruelty to Animals, Etc.—Under the statute relating to the prevention of cruelty to animals (Chap. 260, C. L. 1915), it is made the duty of constables to arrest and prosecute all persons of whose violation of said statute they may have knowledge or reasonable notice, and for each neglect of such duty the officer so offending shall be deemed guilty of a disdemeanor. See § 15542. Certain other duties of constables under the same act are prescribed in § 15540.

2107. Constable Not to Advocate.—On the trial of a civil cause in justice court, the constable who served either the original or jury process shall not appear and advocate for either party to the suit. See § 14204.

2108. To Receive Certain Persons into Custody.—Railroad conductors may deliver persons guilty of misconduct upon their trains to any constable, with a written statement of the charges, and the constable shall receive such person and make a proper complaint before some justice of the peace. See § 8299.

2109. To Take Custody of Person Disturbing School Meeting.—The moderator of any school meeting may order any constable to take into custody any person who may persist in disturbing said school meeting. See § 5666.

2110. To Search for Certain Books, Etc.—In case of the non-delivery of books and papers by any public officer to his successor in office, a warrant may be issued commanding the constable to search for such books and papers, and if found to bring them before the officer issuing said warrant. See Sec. 314 of this Guide.

2111. To Obey and Return Writ of Habeas Corpus.—It shall be the duty of every sheriff, coroner, constable, or marshal, upon whom a writ

of habeas corpus shall be served, whether such writ be directed to him or not, upon the payment or tender of the damages allowed by law, to obey and return such writ according to the exigency thereof. See § 13518.

2112. To Obey and Return Writ of Certiorari.—It shall, in like manner, be the duty of the person upon whom any writ of certiorari, issued pursuant to the provisions of this chapter (Chap. XXXVII of the Judicature Act of 1915, being § § 13453 to 13523, C. L. of 1915), shall be served, upon payment or tender of the fees allowed by law for making a return to such writ, and for copying the warrant or other process to be annexed thereto, to obey and return the same according to the exigency thereof. § 13519.

2113. Arrest of Fraudulent Debtor.—A warrant for the arrest of a fraudulent debtor shall be accompanied by a copy of all affidavits presented to the officer who issued the same, and shall be delivered to the defendant at the time of serving the warrant. See § 13634. The officer to whom such warrant shall be delivered, shall execute the same by arresting the person named therein, and bringing him before the officer issuing such warrant; or in case of the absence or inability of such officer, before some other officer having jurisdiction in the case, and shall keep him in custody until he shall be duly discharged, or committed as hereinafter provided. § 13635.

2114. Disturbance of Religious Meeting.—It shall be the duty of all constables who may be present at the meeting of any assembly for religious worship which shall be interrupted or disturbed, on sight to apprehend the offender, and take him before some justice of the peace, to be proceeded against according to law. § 15490.

2115. To Secure and Hold Stolen Property.—The officer who shall arrest any person charged as principal or accessory to any robbery or larceny, or with buying, receiving, or aiding in the concealment of any money, or other property, knowing the same to have been stolen, shall secure the property alleged to be stolen, and hold the same irrepleviable, and shall be answerable for the same, and he shall annex a schedule thereof to his return, and, upon conviction of the offender, the stolen property shall be restored to the owner. § 15305. [See Form No. 199.]

2116. Political Purity.—It is the duty of constables to report all violations of the act relative to the maintenance of political purity, being § § 15169-78. See Sec. 1207 of this Guide.

2117. Duty Under Act Creating a Live Stock Sanitary Commission.—The commissioners shall have power to call upon any sheriff, undersheriff, deputy sheriff, or constable to execute their orders, and such officers shall obey the orders of said commissioners, and the officers performing such duties shall receive compensation therefor as is prescribed by law for like services, and shall be paid therefor in like manner. And any officer may arrest and take before any justice of the peace of the county any person found violating any of the provisions of this act, and such officer shall immediately notify the prosecuting attorney of such arrest, and he shall prosecute the person so offending according to law. § 7323.

2118. Sale of Estray Animals.—If such owner, or person entitled to the possession of the same, shall not appear and make out his title to

the animal or animals within six months after the taking up of such animals and entry thereof with the township clerk, such animal or animals shall be sold at the request of the finder, by any constable of the township, at public auction, upon first giving notice thereof in writing, by posting up the same in three of the most public places in such township, at least ten days before such sale; and the finder may bid therefor at such sale, and the money arising therefrom, after deducting all the lawful charges aforesaid, and the fees of the constable, which shall be the same as upon a sale on execution, shall be deposited in the treasury of the township, and notice thereof shall be given by the constable making such sale, to the township clerk, whose duty it shall be to charge the same to the treasurer of the township. See § 7454. [See Form No. 200.]

2119. Constables to Render Assistance to Food and Drug Commissioner.—All * * * sheriffs, police officers, and other peace officers shall, when called upon for aid and assistance by the food and drug commissioner, render such service as may be requested by him, within the scope of his authority. Act 263 of 1917, Sec. 7.

2120. Failure to Assist Food and Drug Commissioner Ground for Removal.—Any officer required by this act to give assistance to the food and drug commissioner who shall fail or refuse so to do shall be deemed guilty of a misfeasance in office, and such failure or refusal shall be deemed a ground for removal from office. Nothing in this act contained shall in any way be construed as relieving any of the said officers from the performance of duties devolving upon them by virtue of the laws of this State. Act 263 of 1917, Sec. 9.

2121. Sale of Certain Logs, Timber, Etc.—In case of logs, timber, etc., drifting upon the banks or shores of the waters of this State, and not removed within eighteen months, a statement of the same may be delivered to any constable, who shall sell the same, by giving due notice thereof. The proceeds, after deducting his fees, shall be paid over to the owner or occupant of the lands. A certificate of such sale, with a sworn statement annexed, shall be filed with the county clerk. See § 6673.

2122. Constable to Enforce Dog Tax Law and May Destroy Dogs.—It shall be unlawful for anyone to permit any dog owned by him or her to be at large without said license tag, and it shall be the duty of all sheriffs, deputy sheriffs, constables and police officers to enforce the provisions of this law. Any sheriff, deputy sheriff, constable or police officer shall have authority to destroy, and it shall be his duty to destroy, any dog or dogs found at large in violation of the provisions of this act. These officers shall receive for any services performed under this act the same fees as are provided in cases of executing warrants in criminal cases. Act 347 of 1917, Secs. 4 and 6.

CHAPTER IX.

FEES OF CONSTABLES.

2123. Fees in Civil Cases.—For serving a warrant, fifty cents; for serving a summons, twenty-five cents.

For a copy of every summons delivered on request, or left at the dwelling of the defendant, in his absence, ten cents.

For serving an attachment or writ of replevin, seventy-five cents; and for a copy thereof, and of the inventory of the property seized, twenty-five cents.

For serving a subpoena, fifteen cents for service upon each witness summoned by him.

For serving an execution on the body, or goods and chattels of the defendant, fifty cents.

Committing a defendant to prison on execution, fifty cents.

For traveling in the service of process, ten cents for each mile necessarily traveled from the place of service to the place of return.

Summoning a jury, seventy-five cents.

Attending upon a jury, fifty cents.

For collecting and paying over money on executions, four per cent upon all sums not exceeding two hundred dollars, and for all sums over that amount, two per cent.

Advertising sale of property, fifty cents.

Selling property, fifty cents.

For attending a circuit court at the request of the sheriff, one dollar and fifty cents for each day, to be paid out of the county treasury. § 14399.

2124. In Criminal Cases.—For serving a warrant or other process for the arrest of any person, issued by any magistrate or court, fifty cents; for traveling to make such service, going only, ten cents per mile, and where an arrest has been made, ten cents per mile return travel from the place of arrest to the place of return; for taking a prisoner to jail or to the house of correction, ten cents per mile, going only; for serving a mittimus, fifteen cents; serving a subpœna, fifteen cents for each witness, and eight cents per mile for the distance actually and necessarily traveled in going to make such service; for summoning a jury, seventy-five cents; for attending the same, fifty cents; for attending any court by order of the magistrate or officer before whom a trial or examination is being held, when not in charge of a jury, one dollar per day for each day, and fifty cents for each half day so actually attending. The board of supervisors of each county may allow such further compensation for the service of process and the expenses and trouble attending the same as they shall deem reasonable. For other services in criminal cases, for which no compensation is especially provided by law, such sum as the board of supervisors shall allow. § 15898. These fees, unless otherwise provided by law, are county charges. § 15901.

Under the provision allowing a constable a per diem compensation for attending court on the order of a magistrate, no fees can be charged for constructive attendance, nor for actual unless a trial or examination is being held at the time before such magistrate.—Hickey v. Supervisors, 62 / 94

2125. Certain Other Fees of Constables.—For services rendered at the request of commissioners or overseers of highways, such sums as shall be allowed by the township board. See Sec. 2126 of this Guide.

2126. Fees for Services Under Highway Law.—The just fees and charges of all justices of the peace, sheriffs, constables, and other officers who may render any service for or at the request of any commissioner

of highways under the provisions of this act (the General Highway Law), shall be allowed by the township board and paid by the township, and it is hereby made the duty of such officers to render any service required of them under the provisions of this act, and when such service is required by a commissioner of highways, it shall not be necessary to pay or tender to such officers their fees for such service. § 4479.

PART XIX

MISCELLANEOUS.

CHAPTER I.—Poundmasters.
CHAPTER II.—Burial of Indigent Soldiers, Sailors and Marines.
CHAPTER III.—Transcient Merchants.

CHAPTER I.

POUNDMASTERS.

2127. Election, Qualification, Etc.—The provisions relating to the election of poundmasters will be found in section 166; those relating to term of office, in section 251; and those relating to acceptance of office, in section 240. Persons elected poundmasters and refusing to serve are required to give written notice of such refusal, or be subject to a penalty of ten dollars. See Sec. 243 of this Guide.

2128. When Beasts to be Impounded.—When any beasts are taken up and distrained by any person, for going at large contrary to law, or contrary to any by-law of a township, they shall be forthwith impounded in the township pound, and the keeper of such pound shall furnish them with suitable food and water, so long as they are detained in his custody. § 14779.

If there shall be no public pound within the township, the beasts shall be impounded in some suitable place under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water so long as they remain impounded. § 14785.

2129. Fee for Impounding.—The person so taking up and distraining the same, shall be entitled to fifty cents per head for all horses, mules, asses and neat cattle, and ten cents per head for all sheep, goats and swine, so distrained by him; and the pound-keeper shall be entitled to four cents per head for all the said animals so impounded. § 14780.

2130. Beasts to be Held Until Fees are Paid.—The pound-keeper shall not deliver to the owner any beasts so impounded, until such owner shall pay him his fees and the expense of keeping such beasts, and also the fees due the person distraining said beasts, which last mentioned fees he shall pay to such person. § 14781.

2131. When Beasts are Distrained for Damage Done.—The beasts so distrained for doing damage, shall be impounded in the township pound, if there be one, and the distrainer shall leave with the pound-keeper a memorandum in writing, signed by him, stating the cause of distraining, and the sum that he demands from the owner, for the damages done by the beasts. The pound-keeper shall not deliver the beasts to the owner, until such owner shall pay him his fees, and the expense of keeping such beasts, together with the sum so demanded by the distrainer, and the expense of advertising such beasts, if they shall have been advertised, and all other legal costs and expenses. § § 14783-84.

2132. In Cases of Escape or Rescue of Beasts.—If any beasts that shall have been lawfully distrained or impounded, shall escape or be rescued, the pound-keeper or person who distrained them may, at any time within seven days thereafter, retake such beasts, and hold and dispose thereof, as if no escape or rescue had taken place. § 14793.

2133. Certain Animals to be Delivered to Poundmasters.—Persons found violating any of the provisions of the act for the prevention of cruelty to animals (Chap. 260, C. L. 1915), may be arrested and held without warrant, in like manner as in the case of persons found breaking the peace, and it shall be the duty of the person making the arrest to seize all animals and fowls found in the keeping or custody of the person arrested, and which are then being used, or held for use in violation of any of the provisions of this act, and the person making such seizure shall cause such animals or fowls to be at once delivered to a poundmaster of the town, village, or city in which the same may be, and it shall be the duty of such poundmaster to receive such animals or fowls, and to hold the same and proceed in regard to them in all respects as provided by law in other cases of animals impounded. § 15539.

2134. How Possession Recovered.—The methods of procedure to recover possession of beasts which have been impounded are prescribed in § § 14779-95, C. L. of 1915.

CHAPTER II.

BURIAL OF BODIES OF UNION SOLDIERS, SAILORS AND MARINES.

2135. Burial of Bodies of Union Soldiers.—Hereafter whenever any honorable (honorably) discharged Union soldier, sailor or marine, having served in the army or navy of the United States during the civil war or the late war with Spain, or the wife or widow of such soldier, sailor or marine, or any army nurse who was employed as a nurse by authority which is recognized by the war department, and who rendered actual service as a nurse in attendance upon the sick and wounded in any regimental post, camp or general hospital of the armies of the United States for a period of six months or more, and who was honorably relieved from such service, shall die, not possessed of an estate, both real and personal, exceeding the sum of one thousand five hundred dollars, and is a resident of this State, it shall be the duty of the board of supervisors in the respective counties, or the board of county auditors in counties having a board of county auditors, upon application therefor by the executor or administrator of the estate of such deceased person, or by the person or persons who may have incurred or advanced the expenses in connection with the burial of said army nurse, soldier, sailor, marine, or the wife or widow of said soldier, sailor or marine, to pay to the estate of such deceased person, or to the person or persons who incurred or advanced such expense, a sum not to exceed fifty-five dollars for the purpose of reimbursing such person or persons for the expenses thus incurred. § 1057.

2136. Duty of Person Appointed.—It shall be the duty of the board of supervisors, or board of county auditors in counties having a board of county auditors, of each county in this State to appoint in each township

and ward in their respective counties, a suitable person other than those designated for the care of paupers and the care of criminals, whose duty it shall be in the township or ward, whenever application is made for reimbursement by the county for such funeral expenses paid or advanced, or incurred for the burial of such deceased person, to make an investigation of such claim and report his action to the clerk of the board of supervisors of the county, or to the clerk of the board of county auditors as the case may be, in all cases setting forth all the facts, together with the name, rank and command to which such soldier, sailor or marine belonged, and in case of such wife or widow, the rank and command to which her husband or deceased husband belonged, the name and service rendered as such army nurse, the date of his or her death, place where buried, and his or her residence and occupation while living. He shall require such person or persons who paid, advanced or incurred such burial expenses for such deceased person to furnish the board of supervisors, or board of county auditors in counties having a board of county auditors, with a sworn itemized statement of the expense incurred in the burial of the deceased person mentioned in the application. The person so appointed as aforesaid shall receive from the county the sum of two dollars per day for the time actually and necessarily employed by him in the performance of his duties. § 1058.

2137. Payment of Expenses.—All expenses incurred in such burial as provided in this act, shall be audited and paid by the board of supervisors, or board of county auditors in counties having a board of county auditors, the same as other legal charges against the county. § 1060.

CHAPTER III.

TRANSIENT MERCHANTS.

2138. Term Defined.—A transient merchant, within the meaning of this act, is any person or corporation who shall engage in, do, or transact any temporary or transient business at wholesale or retain in any township, city, or village in this State, in the sale of goods, wares, and merchandise, and who for the purpose of carrying on such business shall have, use, or occupy any building, car, boat or room, including rooms in hotels, for the exhibition and sale of such merchandise. This act shall apply to and include principals and their agents and employes and to persons forming a copartnership. § 7001.

2139. Application for License, Fee, Etc.—It shall be unlawful for any transient merchant to engage in, do, or transact any business in the sale of goods, wares, and merchandise without first having obtained a license therefor as hereinafter provided. Such transient merchants desiring to engage in, do, or transact business in this State shall file an application for license for that purpose with the clerk of the township, city, or village in which he desires to do business, which application shall state his name, residence, building, car, boat or room in which he proposes to do business, and the length of time for which he proposes to do business. * * * * If such transient merchant desires to transact business in any township, city, or village having a population of less than twenty thousand as shown by the last preceding United States census, he shall pay to such clerk at the time of making said application a license fee of ten dollars

per day for the first five days or any part thereof for which application is made. And in all cases such transient merchant shall pay to such clerk, at the time of filing such application, ten dollars per day for each day after the said five days, during which he proposes to transact such business. § 7002.

2140. Clerk to Issue License.—Upon the filing of the application and the payment of the license fee provided for in the preceding section, such clerk shall issue to such transient merchant a license to do business as such, at the place described in his application and for the length of time for which payment shall have been made, and such license shall entitle such transient merchant to do business at the place and for the time therein stated. No license shall be good for more than one person, corporation, or copartnership, nor for more than one building, car, boat or room. At or before the expiration of such license it may be renewed by said clerk on application being made therefor and the payment of the license fee at the rate hereinbefore provided. § 7003.

2141. License to be Obtained Before Advertising.—No transient merchant shall advertise, represent, or hold out that any sale of goods, wares, or merchandise is an insurance, bankrupt, insolvent, assignee's, executor's, administrator's, receiver's, or closing out sale, or sale of goods, wares or merchandise damaged by smoke, fire, water or otherwise, unless he shall have first obtained a license to conduct such sale from the clerk of the township, city or village in which he proposes to conduct such sale. The applicant for such license shall make to such clerk an application in writing therefor and under oath, showing all the facts in regard to the sale which he proposes to conduct, including a statement of the names of the persons from whom such goods, wares or merchandise so to be sold were obtained, the date of delivery of such goods, wares, and merchandise to the person making application for the license, and the place from which the said goods, wares and merchandise were last taken, and all the details necessary to fully identify the goods, wares and merchandise so to be sold. Such application shall also state whether the applicant proposes to advertise or conduct such sale as an insurance, bankrupt, insolvent, assignee's, executor's, receiver's, administrator's or closing out sale. § 7004.

2142. Issue of License.—If such application shall show that the proposed sale is of the character which the applicant desires to conduct and advertise, such clerk shall issue a license to the person applying for the same authorizing him to conduct and advertise a sale of the particular kind mentioned in the application. § 7004.

2143. Penalty for False Statement.—Every person making a false statement of any fact in the application provided for in the last preceding section shall be deemed guilty of perjury and shall on conviction thereof be imprisoned in the state prison for not less than two years nor more than ten years. § 7005.

2144. Penalty for Conducting Sale Without License.—Every person who shall in any manner engage in, do, or transact the business of a transient merchant in selling goods, wares and merchandise without first having obtained a license therefor as required by this act, or who shall continue such business after the time limited in the license obtained therefor shall have expired, and any transient merchant who shall expose

for sale any goods, wares or merchandise, contrary to the provisions of this act, or who shall advertise, represent, or hold forth any sale of goods, wares, or merchandise to be an insurance, bankrupt, insolvent, assignee's, executor's, administrator's, receiver's or closing out sale, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor and shall upon conviction thereof, be fined in a sum of not less than fifty dollars nor more than five hundred dollars, or shall be imprisoned in the county jail for not less than ten days nor more than thirty days in the discretion of the court. § 7006.

2145. Amount of Fee First Lien on Property.—Should any transient merchant do any business in selling goods, wares or merchandise without first having secured a license therefor as provided by this act, the amount which should have been paid by such transient merchant pursuant to the provisions of this act, shall be a first lien in favor of the township, village or city in which such business shall be done, upon all goods, wares and merchandise of such transient merchant within said township, city or village, and the treasurer thereof may enforce the payment of the same by levy upon and sale of such goods, wares and merchandise in the same manner that the payment of delinquent taxes upon personal property is enforced under the tax law of this State. § 7007.

2146. Disposition of License Fees.—All license fees collected under the provisions of this act shall be paid by the person collecting the same into the general fund of the township, city or village entitled to the same. § 7008.

2147. When Act Not Applicable.—Nothing in this act contained shall be held or construed to affect sales by traveling representatives or regularly established jobbers or manufacturers selling to the trade, nor to persons selling by sample for future delivery, nor any person selling products raised upon lands leased or owned by him; nor to individuals handling vegetables, fruits or perishable farm products. § 7009.

CHAPTER IV.

OF ANIMALS RUNNING AT LARGE IN HIGHWAYS.

2148. Unlawful for Cattle, Etc., to Run at Large.—From and after the year eighteen hundred and sixty-seven, it shall not be lawful for any cattle, horses, sheep, or swine to run at large in any public highway of this State. But this act shall be inoperative only in those counties or parts of counties in which it shall be so determined by resolution passed by the board of supervisors of such county. The powers granted to boards of supervisors in this section, shall not abridge the power reserved to the people of a township, in § 2050, C. L. of 1915. § 7285.

See Section 209 of this Guide for provision prescribing the powers of townships to make orders and by-laws for determining the time and manner in which cattle and other animals shall be restrained from going at large in the highway.

2149. Seizure of Animals Running at Large.—In case the board of supervisors in any county shall pass a resolution allowing any of the classes of animals named in the preceding section to run at large in the public highway, then in such county, after the year eighteen hundred and sixty-seven, the following sections of this act shall be null and void, but otherwise they shall be in full force. § 7286.

2150. Seizure of Animals Running at Large or Trespassing.—It shall be the duty of the overseer of highways to seize and take into his custody and possession any animal forbidden to run at large, which may be running at large in any highway of which he is overseer, contrary to the provisions of the foregoing section, and it shall be lawful for any person to seize and take into his custody and possession any animal which may be in any public highway and opposite the land owned or occupied by him, contrary to the provisions of the foregoing section; and it shall be lawful for any person to take into his custody and possession any animal which may be trespassing upon premises owned or occupied by him. § 7287.

2151. Sale, Etc., of Seized Animals.—Whenever any such person shall seize and take into custody or possession any animal under the authority of the next preceding section (2150), it shall be the duty of such person to forthwith cause a description of said animal or animals to be entered upon a book to be kept by the clerk of the town, city, or village in which such animals were taken up, and shall thereupon give immediate notice to a justice of the peace, or a commissioner of highways of the town, city, or village in which such seizure and possession shall have been taken, and such justice or commissioner shall thereupon give notice by affixing the same in three public and conspicuous places in said town, city, or village, one of which shall be the district schoolhouse nearest the residence of such justice or commissioner, that such animal or animals will be sold at public auction, at some convenient place, to be specified in such notice, in said town, city, or village, not less than fifteen nor more than thirty days from the time of the affixing of such notice. The same justice or commissioner shall proceed to sell the said animals for cash, and out of the proceeds thereof shall, in the first place, retain the following fees and charges for his services in giving said notice and making such sale, viz.: For the first horse sold, three dollars, and for every additional horse, one-half dollar; for each cow, calf or other cattle, not exceeding five in number, one dollar; and for every additional cow, calf, or other cattle, twenty-five cents; and for every sheep or swine, not exceeding five in number, one-half dollar; and for every additional sheep or swine, ten cents; together with a reasonable compensation, to be estimated by such justice or commissioner, to be paid the person making the seizure, for the care and keeping of said animal or animals from the time of the seizure to the safe thereof. If there is any surplus money arising from said sale, the said justice or commissioner shall retain the same in his hands, and pay the same to the owner or owners of said animal or animals, after a reasonable demand therefor, and satisfactory proof of such ownership. Such owner or owners shall appear and claim such surplus moneys within one year after sale. And if the owner or owners of such animal or animals shall not appear and demand such surplus moneys within one year after such sale has been made, he shall be forever precluded from recovering any part of such moneys; and the same shall be paid to the treasurer of the town for the use of the town, and his receipt therefor shall be a legal discharge of said justice or commissioner. Any animal sold in pursuance of this act may be redeemed any time within six months following such sale, by paying the expenses of such custody and sale, and a reasonable compensation for keeping the same. § 7288.

2152. How Owner May Regain Possession of Seized Animal.—Any owner of any animal which shall have been seized under and pursuant to the foregoing provisions, may, at any time before the sale thereof, demand, and shall be entitled to the possession of such animal, upon the payment by him of the several sums hereinbefore required to be paid to the said justice or commissioner, and to the person by whom the seizure aforesaid shall have been made, together with a reasonable compensation to the person making such seizure, for the care and keeping of such animal, to be estimated and fixed by such justice or commissioner, and upon making to such justice or commissioner satisfactory proof of ownership. And if such owner shall make such demand and proof at least three days before the time appointed for such sale, he shall be entitled to the custody and possession of such animal, upon paying one-half of the several sums above mentioned, together with the whole amount of compensation awarded by the said justice or commissioner. § 7289.

2153. When Owner Not Liable for Fees, Etc.—In case the animal so seized under the foregoing provisions shall have been so running at large or trespassing by the wilful act of any other person than the owner, to effect that object, such owner shall be entitled to the possession of such animal by making the demand therefor and the proof required in the next preceding section, and paying to the person making such seizure the amount of compensation fixed by such justice or commissioner for the care and keeping of such animal, and without paying any other charges; and the person committing such wilful act shall be liable to a penalty of twenty dollars, to be recovered in an action at law at the suit of the owner of such animal, or the person making such seizure. § 7290.

2154. Act Not to Apply North of T. 12 N.—This act (sections 2148-54 of this Guide) shall not apply to that portion of this State lying north of the tier of townships twelve north, unless so ordered by the board of supervisors of any county lying north of said tier of towns. § 7292.

BLANK FORMS.

BLANK FORMS.

FORMS RELATING TO TOWNSHIPS.

No. 1.

Application to the Board of Supervisors for Alteration of Township Boundaries or Erection of New Township.

(Section 17.)

To the Board of Supervisors of —— County, Michigan:

We, the undersigned, freeholders of the townships of ——, and ——, in the county of ——, hereby respectfully pray that the following described territory, to wit: (describe the territory sought to be detached,) may be detached from the said township of ——, and added to the said township of ——. (Or, erected and organized into a new township to be called the township of ——.) And your petitioners herewith present a map of all the townships to be affected by the division prayed for, showing the alterations of said townships.

Dated this —— day of ——, A. D. 19—.

(Signatures of at least 12 freeholders of each of the townships affected, or by at least five electors in a township having not to exceed thirty electors.)

No. 2.

Notice of Application for Organization or Division of Township.

(Section 18.)

To Whom It May Concern:

Notice is hereby given by the undersigned, freeholders of the township (or, townships, in case more than one township is affected) of ——, in the county of —— that application will be made to the board of supervisors of said county, at their next meeting, to be held on the —— day of ——, A. D. 19—, that the following described territory, to wit: (here describe the territory to be detached) be detached from the said township (or, townships) of —— and added to said township of ——. (Or and erected and organized into a new township to be called the township of ——.)

Dated this —— day of ——, A. D. 19—.

(Signatures of at least 12 freeholders of each of the townships affected, or by at least five electors in a township having not to exceed thirty electors.)

No. 3.

Affidavit of Posting and Publication of Notices.

(Section 18.)

STATE OF MICHIGAN, County of ——, ss.

A. B., being duly sworn, deposes and says, that on the —— day of ——, A. D. 19—, he posted up true copies of the notice hereto annexed, in five of the most public places in each of the townships to be affected thereby, as follows, to wit: (here describe each of the places where a copy of such notice was posted.) And this deponent further says that he caused a copy of said notice to be published once in each week for four successive weeks immediately preceding the meeting of the board of supervisors at which the application mentioned therein is to be made, in the —— ——, a newspaper printed in said county of ——.

A— B—.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

.....,

Notary Public.

My commission expires ——, 19—.

In case no publication is had that portion of the affidavit will be omitted.

No. 4.

Notice of Township Meeting When New Township Failed to Hold First Meeting at Time Appointed.

(Section 24.)

Whereas, the inhabitants of the township of —— failed to hold their first meeting, on the —— day of ——, 19—, the day specified by law, we, the undersigned, qualified voters of said township, do hereby call a meeting of the electors of said township at (here designate the place prescribed in the act or proceedings by which the township was organized) on the —— day of ——, A. D. 19—.

Dated this —— day of ——, A. D. 19—.

(Signatures of three qualified voters of township.)

[This notice is to be posted in at least three public places in such township, at least ten days previous to meeting.]

No. 5.

Notice to Justices Elected in New Township of Time and Place of Classifying.

(Section 28.)

To ——:

Please to take notice, that I will meet the justices elected for the township of ——, in the county of ——, and the township clerk, of said township, on the —— day of ——, A. D. 19—, at —— o'clock in the forenoon, to determine by lot the classes of such justices.

Dated this —— day of ——, A. D. 19—.

.....,

Supervisor.

No. 6.

Certificate of Classification of Justices.

(Section 29.)

We, the undersigned, supervisor and township clerk of the township of ——, county of ——, do hereby certify, that on the —— day of ——, instant, at the dwelling house of ——, in said township, a drawing was had in our presence, in accordance with the statute providing therefor, to determine by lot the respective classes of A— B—, C— D—, E— F—, and G— H—, who were elected justices of the peace for said township, at a township meeting held therein on the — day of ——, last past, and that the following is the result of such drawing, that is to say: A— B— drew for the term of one year; C— D— drew for the term of two years; E— F— drew for the term of three years, and G— H— drew for the term of four years.

Dated this —— day of ——, A. D. 19—.

....., ...,
Supervisor.
....., ...,
Township Clerk.

No. 7.

Petition to Board of Supervisors for Order for Construction of a Road or Bridge Partly in More Than One Township.

(Section 146.)

To the Board of Supervisors of —— County, Michigan:

The undersigned, the township board of the township of ——, in said county, respectfully show that said township is desirous of having a bridge (or road) constructed (rebuilt or repaired) (here describe location of bridge or road), which bridge (or road) would, when constructed, be partly in said township and partly in the township (city or village) of ——, in said county, and the said township (city or village) of ——, is unwilling (or having been requested so to do, neglects or refuses) to join in building (rebuilding or repairing) such bridge (or road), or to contribute its (or their) just share to the building (rebuilding or repairing) thereof;

Now, therefore, in pursuance of Act No. 306, Public Acts of 1905, and of action taken at a meeting of the township board of said township of ——, regularly held on the —— day of ——, 19—, your petitioners, for and in behalf of said township of ——, respectfully petition your honorable body for an order for the construction (rebuilding or repairing) of such bridge (or road) and for fixing the respective proportions which each of such townships (or such township and city or village) shall contribute for the construction (rebuilding or repairing) of such bridge (or road) and for keeping the same in repair, as well as for deciding the kind of bridge (or road) to be constructed.

(If such petition is not to be presented at the annual meeting of said board of supervisors or at an earlier meeting already called, insert here: And your petitioners further pray that a special meeting of your honorable body be called for the purpose of considering the matter presented in the foregoing petition.)

And your petitioners will ever pray, etc.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,
Township Board of the Township of——.

No. 8.

Notice to Other Township, City or Village of Hearing of Petition for Road or Bridge.

(Section 147.)

To the (Township Board, Village Council or Common Council, as the case may be) of the —— of ——, —— County, Michigan:

You are hereby notified that the township board of the township of ——, in said county, has petitioned the board of supervisors of said county, as follows: (Here insert the whole of Form No. 7.)

You are also hereby notified that at a meeting of said board of supervisors, to be held on the —— day of ——, 19—, it is the intention of the undersigned to ask for the hearing of said petition by said board of supervisors.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,
Township Board of the Township of ——.

No. 9.

Admission by Township Board of Completion of Road or Bridge.

(Section 151.)

To the Board of Supervisors of —— County, Michigan:

The undersigned, the township board of the township of ——, in said county, in behalf of which, and of the township of ——, in said county, a certain bridge (or road) across (here describe location of bridge or road) has been erected (rebuilt or repaired) in accordance with the provisions of Act No. 306, Public Acts of 1905, hereby admit the full completion of said bridge (or road).

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,
Township Board of the Township of ——.

No. 10.

Certificate of Election When Choice Is Determined by Lot.

(Section 194.)

We, the undersigned, inspectors of election at the annual township meeting held in the township of ——, county of —— and State of Michigan, on Monday, the —— day of April, A. D. 19—, for the election of officers of said township, do hereby certify that at such election, an equal number of votes were given to A— B— and C— D—, for the office of ——, as appears by the statement made by us of the result of the said election, and that we, the said inspectors, did thereupon determine the choice between the said A— B— and C— D— by lot, and that such choice resulted in the election of the said A— B— and we do therefore certify and declare that the said A— B— has been elected accordingly.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
Inspectors of Election.

No. 11.

Order of Commissioner and Township Board, When Township Meeting Fails to Fix Amount of Road Repair and Highway Improvement Taxes.

(Section 1502.)

Whereas, The electors present at their annual township meeting held in the township of ——, on the —— day of ——, A. D. 19—, did not determine the amount of the road repair tax (or, the highway improvement tax, or both, as the case may be) to be assessed in said township, as provided by law; therefore

We, the undersigned, township board and commissioner of highways of said township, acting jointly, do hereby order to be levied on the taxable property of said township for road repair tax (or highway improvement tax, or each, as the case may be) the sum of —— dollars.

Dated at ——, this —— day of ——, A. D. 19—.

....., Commissioner of Highways.

.....,
.....,
.....,
....., Township Board.

[As to limit of amount of road repair or highway improvement tax, see Section 211 of this Guide.]

No. 12.

Order by Township Board for Special Township Meeting to Vote on Proposed Additional Road or Bridge Tax.

(Section 226.)

It appearing to the commissioner of highways and the township board of the township of ——, at a meeting of said board, called pursuant to the provisions of section two of chapter eight of Act 283, Public Acts of 1909, that it is necessary to raise more than one thousand dollars, in addition to that already provided for, for (the building, rebuilding or repairing of any bridge or bridges, road or roads, as the case may be); therefore the said township board does hereby order and direct that at a special (or, the next annual) township meeting of said township, to be held on the —— day of ——, A. D. 19—, a proposition to raise by tax in said township, for the purpose above stated, the sum of —— dollars, in addition to that already provided for by law, be submitted to the qualified electors of said township.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
....., Township Board.

No. 13.

Notice by Township Board Submitting Question of Raising Tax for Bridges or Exigency Road Tax to Vote of Electors.

(Section 227.)

NOTICE.

Notice is hereby given, That at (a special, or, the next annual) township meeting of the township of ——, in the county of ——, to be held on the —— day of ——,

A. D. 19—, there will be submitted to the qualified electors of said township, a proposition to raise by tax in said township the sum of —— hundred dollars, for the purpose (of building, rebuilding or repairing) a bridge, to be expended in (building, rebuilding or repairing), a bridge over the —— river on the line of the highway running (here describe the highway) at the place where said highway crosses said river. Said vote shall be by ballot, and such ballots shall read "For the bridge tax" or "Against the bridge tax."

Dated this —— day of ——, A. D. 19—.

....., Township Clerk of the Township of ——.

[This form may be altered to apply to an exigency road tax.]

No. 14.

Notice of Intention to Move for Appropriation for Building Town Hall.

(Section 229.)

To Whom It May Concern:

Notice is hereby given, that it is the intention of the undersigned, freeholders of the township of ——, in the county of ——, at the next township meeting of said township, to be held on the —— day of ——, A. D. 19—, to move for the appropriation, by a vote of the qualified electors of said township, of the sum of —— hundred dollars, to be raised by tax in said township in the year nineteen hundred and ——, said amount to be expended in the erection of a town hall for the use of said township.

Dated this —— day of ——, A. D. 19—.

(Signatures of at least 12 freeholders.)

NOTE.—For affidavit of posting see Form No. 3.

No. 15.

Justification of Sureties on Official Bonds.

(Section 244.)

STATE OF MICHIGAN, County of ——, ss.

C— D— and E— F—, sureties on the foregoing bond of A— B—, —— in and for the township of ——, in said county, being duly sworn, each for himself, doth depose and say, that he is worth the sum hereinafter specified, viz.: The said C— D— the sum of —— dollars and the said E— F— the sum of —— dollars, in unincumbered property, not exempt from execution under the laws of this State, after payment of all just debts, claims and liabilities.

C— D—.
E— F—.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

....., Notary Public.
My commission expires ——, 19—.

No. 16.

Notice by Supervisor to County Clerk of Vacancy in Office of Township Treasurer or Justice of the Peace.

(Sections 267 and 1016.)

To the County Clerk of the County of ——:

You are hereby notified that the office of township treasurer (or, justice of the peace) of the township of ——, has become vacant by the death (or, resignation, or, removal, or, as the case may be) of A— B—, the last incumbent of said office, (and if the office be that of a justice of the peace, add, whose term of office would have expired on the —— day of ——, A. D. 19—.)

Dated this —— day of ——, A. D. 19—.

....., Supervisor of —— Township.

FORM RELATING TO REGISTRATION.

No. 17.

Notice of Meeting of Board of Registration in New Township.

(Section 368.)

To the Electors of the Township of ——:

Notice is hereby given that a meeting of the board of registration of the township of ——, will be held at ——, in said township, on Saturday, the —— day of ——, for the purpose of registering the names of all such persons as shall be possessed of the necessary qualifications of electors in said township, who may apply for that purpose, and that said board of registration will be in session on the day and at the place aforesaid, from eight o'clock in the forenoon until eight o'clock in the afternoon, for the purpose aforesaid.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
....., Board of Registration.

[For affidavit of posting of foregoing notice, Form No. 3 may be used.]

FORMS RELATING TO ELECTIONS.

No. 18.

Notice of Election to Be Given by Township Clerk.

(Section 407.)

ELECTION NOTICE.

Notice is hereby given to the electors of the township of ——, in the county of ——, and State of Michigan, that the next ensuing general election will be held on Tuesday, the —— day of November next, at ——, in said township;

at which election the following officers are to be chosen, to wit: (Here set forth the officers to be chosen; and if a vacancy is to be filled, state the name of the person in whose office the vacancy has occurred, and that such vacancy will be supplied at such election.)

The polls of said election will be opened at seven o'clock in the forenoon, or as soon thereafter as may be, and will be continued open until five o'clock in the afternoon, unless the board shall, in their discretion, adjourn the polls at twelve o'clock, noon, for one hour.

Dated at ——, this —— day of ——, A. D. 19—.

.....,
Township Clerk.

No. 19.

Record by Township Board of Division of Township into Election Precincts.

(Section 414.)

Resolved, by the township board of the township of ——, that the said township be and is hereby divided into —— election precincts, as follows: The following described territory, viz.: —— shall constitute and be denominated election precinct number one; (and in like manner describe each precinct.)

No. 20.

Notice of Division of Township into Election Precincts.

(Section 414.)

To the Electors of —— Township, —— County, Michigan:

The following is a diagram of the election precincts in the township of ——, as determined by the township board of said township: (here insert diagram of township, showing the boundaries of each precinct.) The following described territory (etc., as in preceding form.)

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,
Township Board.

No. 21.

Notice of Change of Place of Holding Election.

(Section 416.)

To the Electors of —— Township, —— County, Michigan:

Take notice, that the inspectors of election of this township have adjourned to (here designate place selected) in said township, where the election will this day be held.

Dated at ——, this —— day of ——, A. D. 19—.

.....,
.....,
.....,
Inspectors of Election.

FORMS RELATING TO THE TOWNSHIP BOARD.

No. 22.

Affidavit of the Correctness of Account Presented.

(Section 687.)

STATE OF MICHIGAN, County of ——, ss.

A— B—, being duly sworn, deposes and says, that the item for services and disbursements mentioned in the foregoing account, are in all respects correct; that such services have been actually rendered, and such disbursements made, or the liability of this deponent therefor actually incurred, and that no part of said account has been paid to this deponent, or otherwise satisfied.

A— B—.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

.....,

Notary Public.

My commission expires ——, 19—.

No. 23.

Order for Raising Money for Township Expenses in Case of Neglect or Refusal of Electors.

(Section 688.)

Whereas, It appears to us that at the annual township meeting of the township of ——, held therein on the —— day of ——, A. D. 19—, the electors thereof neglected (or refused) to vote such sum or sums of money as were necessary to defray the ordinary township expenses of said township; now, therefore, at a regular meeting of the township board of said township, held therein on this —— day of ——, A. D. 19—, the sum of —— dollars is hereby voted by us to be raised by tax upon the taxable property in said township, for the purpose aforesaid.

Witness our hands the day and year last aforesaid.

.....,
.....,
.....,
.....,

Township Board.

No. 24.

Order of Township Board Requiring Treasurer to Give a New Bond.

(Section 696.)

To ——, Treasurer of —— Township, —— County, Michigan:

Whereas, It appears to us, the township board of the township of ——, that the sureties named in and who executed your official bond as treasurer of said township, have become insolvent, (or, have removed out of the county of ——, or, have, in the opinion of said board, become insufficient, or, that the penal sum named in the official bond is insufficient,) now, therefore, we do hereby require you, as such treasurer, to give a new bond to the said township, in the sum of —— dollars, with sufficient sureties, to be approved as required by law.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,

Township Board.

No. 25.

Appointment of Township Treasurer to Fill Vacancy.

(Sections 269, 697 and 1384.)

Whereas, A— B—, the township treasurer of the township of ——, in the county of ——, has failed to give a bond to ——, as required by law (or, has died, or, resigned, etc., as the fact may be):

Now, therefore, we, the said township board, do hereby appoint C— D— of the said township, to the office of township treasurer of said township for the remainder of the term for which the said A— B— was elected, and until his successor is elected and qualified.

Given under our hands this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,
Township Board.

[This form may be readily adapted for use in case of the appointment of any other officer to fill vacancy.]

No. 26.

Bond to Be Given by Contractors.

(Sections 708, 709.)

STATE OF MICHIGAN, County of ——, ss.

Know all men by these presents, that we, A— B—, of the township of ——, as principal, and C— D— and E— F—, of the township of ——, in the county of ——, as sureties, are held and firmly bound unto the people of the State of Michigan, in the penal sum of —— dollars, to be paid to the people of the State of Michigan, to which payment, well and truly to be made, we bind ourselves and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this —— day of ——, A. D. 19—.

Whereas, The above bounden, A— B—, has contracted with the township of ——, in the county aforesaid, to (here state the substance of the contract), therefore, the condition of this obligation is such that if the said A— B— shall faithfully perform such contract and shall pay all indebtedness, as the same may become due and payable either by himself or by any sub-contractor, which may accrue to any person, firm or corporation, on account of any labor performed or materials furnished in the performance of such contract, then the above obligation to be void and of no effect, otherwise to remain in force.

Signed, sealed and delivered in the presence of G— H—.

.....[SEAL.]
.....[SEAL.]
.....[SEAL.]

No. 27.

Order Assigning Places for Carrying On Offensive Trades.

(Sections 719 and 899.)

Whereas, It is judged necessary by us, the township board of the township of ——, county of ——, that a certain place (or certain places) should be assigned for the exercising of the trades or employments hereinafter mentioned, which

are offensive to the inhabitants, (or dangerous to the public health) therefore, we do hereby assign the following described place (or places) in said township (describing such place or places), for exercising the trade or employment of slaughtering beeves or other animals (or of manufacturing soap and candles, or as the case may be), and we do hereby forbid the exercise of any such trade or employment in any other place or places in said township, not so assigned therefor.

Dated this —— day of ——, A. D. 19—.

....,
....,
....,
....,
Township Board.

No. 28.

License of Public Exhibition.

(Section 727.)

We, the undersigned, township board of the township of ——, county of ——, having been applied to by A— B— for a license to give theatrical exhibitions in such township, (or, to exhibit a certain public show, called a circus, or as the case may be), and having met for that purpose, and deeming such exhibition proper, we do hereby authorize and license the said A— B— to give theatrical exhibitions at, (describe the place) in said township, from time to time as he shall choose, for and during the period of —— months from this date, (or to give one exhibition of a certain public show, at —— in said township, on the —— day of ——).

Dated this —— day of ——, A. D. 19—.

....,
....,
....,
....,
Township Board.

[Such terms or conditions may be prescribed as the board shall deem reasonable.]

No. 29.

Notice of Meeting of Township Board or Township Board and Common Council After Change of Boundary of Township.

(Sections 765 and 766.)

To ——:

Notice is hereby given that a meeting of the township boards of the townships of —— and ——, (or, the township board of the township of —— and the common council of the city of ——,) in the county of ——, will be held at —— in the township (or, city) of ——, on the —— day of ——, A. D. 19—, for the purpose of making such agreement concerning the disposition to be made of the lands of which the township of —— was seized before the division thereof (or before the alteration of the limits thereof,) and the apportionment of the proceeds thereof, as said township boards (or, township board and common council) shall deem equitable.

Dated this —— day of ——, A. D. 19—.

....,
Supervisor of Township of ——.

No. 30.

Application to Township Board to Submit Question of Raising Money for Highway Purposes by Bonding.

(Section 779.)

To the Township Board of the Township of ——, county of ——, State of Michigan:

We, the undersigned, freeholders of said township of ——, do hereby petition your honorable board to submit to the qualified electors of said township at the next general election, to be held on the —— day of ——, A. D. 19— (or at a special election to be held on the —— day of ——, A. D. 19—), the question of bonding the said township of —— in the sum of —— dollars for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of the township board providing for the better construction, improvement and care of the highways in said township.

[This application must be signed by at least twenty-five freeholders of the township.]

No. 31.

Record of Proceedings of Township Board on Application to Submit Bonding Proposition.

(Section 779.)

At a meeting of the township board of the township of ——, county of ——, State of Michigan, duly held pursuant to notice at —— on the —— day of ——, A. D. 19—.

Present:

....

....

Board called to order by Supervisor —— at —— o'clock.

The following petition was presented:

(Set forth petition with names of signers.)

The following resolution was offered by —— and its adoption moved:

Whereas, A petition signed by —— freeholders of the township of —— has been filed with the township clerk asking this board to submit to the legally qualified voters of the township at the next general election to be held on the —— day of ——, A. D. 19—, the question of bonding the said township of —— in the sum of —— dollars for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of this board providing for the better construction, improvement and care of the highways in this township, said petition being made and filed in accordance with the provision of Act No. 283 of the Public Acts of the State of Michigan for the year 1909;

Therefore, Be it resolved that the said question be submitted to a vote of the qualified electors of the township of —— at the general election to be held on said —— day of ——, A. D. 19—; and that the clerk be instructed to post proper notices thereof.

Be it further resolved, That the vote upon the proposition aforesaid shall be by ballot which shall be in the following form:

OFFICIAL BALLOT.

Instructions: If you wish to vote for the proposition of bonding the township in the sum of —— dollars for the purpose of constructing and improving highways, put an "X" in the square opposite the word "Yes." If you wish to vote against said proposition, put an "X" in the square opposite the word "No." Fold your ballot before leaving the booth.

For the issuing of township bonds to improve the highways: Yes [ ].

For the issuing of township bonds to improve the highways: No [ ].

The vote upon said resolution was as follows:
Yeas:

....
....

Nays:

....
....

On motion the board duly adjourned.

.....,
Township Clerk.

.....,
Supervisor.

No. 32.

Notice of Election on Question of Bonding Township Under Highway Law.

(Section 779.)

A petition having been filed with the township clerk of the township of ——, according to the provisions of Section 8 of Chapter 14 of Act No. 283 of the Public Acts of 1909;

Notice is hereby given that the township board of —— township has ordered an election to be held at —— on the —— day of ——, A. D. 19—, for the purpose of submitting to the legally qualified voters of said township the question of bonding said township in the sum of —— dollars for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of the township board providing for the better construction, improvement and care of the highways in said township.

By order of the Township Board.

.....,
Township Clerk.

Dated at ——, this —— day of ——, A. D. 19—.

No. 33.

Statement of Election Inspectors.

(Section 779.)

Statement of the election returns on the proposition of bonding the township of —— for the sum of —— dollars, for highway purposes at an election held at —— in said township of —— on the —— day of ——, A. D. 19—.

Total number of votes cast on said proposition: .....
Number of votes in favor thereof: .....
Number of votes against said proposition: .....

STATE OF MICHIGAN, } ss.
County of .....,

We, the undersigned election inspectors of the township of ——, do hereby certify that the foregoing is a correct statement of the votes cast at said election upon the question of bonding said township for highway purposes.

In Witness Whereof, We have hereunto set our hands this —— day of ——, A. D., 19—.

.....
.....
.....
.....

No. 34.

Record of Subsequent Proceedings of Township Board.

(Section 779.)

At a meeting of the township board of the township of ——, county of ——, held at ——, on the —— day of ——, A. D. 19—, at —— o'clock, — M.

Present:

....

....

Meeting called to order by Supervisor ——; and the business of canvassing the votes cast at the election held on the —— day of ——, 19—, taken up. Upon the question of bonding the said township of —— for highway purposes said vote was duly canvassed with the following result:

Total number of votes cast on said proposition: .....

Number of votes in favor thereof: .....

Number of votes against said proposition: .....

Moved by —— and seconded by —— that the proposition of issuing bonds for highway purposes in said township be declared carried. Motion prevailed.

Following resolution was introduced by ——:

Whereas, The legally qualified voters of the township of —— have voted in favor of bonding said township for highway purposes in accordance with the provision of Act No. 283 of the Public Acts of the State of Michigan for the year 1909, in the sum of —— dollars;

Be it therefore resolved, That there be issued bonds of said township of ——, county of ——, State of Michigan, in the sum of —— dollars for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of the township board providing for the better construction, improvement and care of the highways in said township, said bonds to be in the denomination of —— dollars each, to be —— in number and numbered consecutively from 1 to —, and to bear interest at the rate of — per cent. per annum, payable ——, said bonds to mature and be payable as follows:

(Set forth the date of maturity of each bond.)

And be it further resolved that said bonds and the interest coupon thereto attached, shall be in substantially the following form:

United States of America
State of Michigan,
County of .....
Township of .....

No..... $.....

Know all men by these presents, That the township of ——, county of ——, State of Michigan, hereby acknowledges itself to be justly indebted, and for value received promises to pay, to bearer, the sum of —— dollars, lawful money of the United States of America on the —— day of ——, 19—, with interest thereon from the date hereof until paid at the rate of —— per cent. per annum, payable —— upon presentation and surrender of the interest coupons hereunto attached, as they severally become due, both principal and interest payable at —— and for the prompt payment of this bond with interest as aforesaid the full faith, credit and resources of said township of —— are hereby pledged.

This bond is one of a series numbered consecutively 1 to —, inclusive, issued by said township for the purpose of providing funds for graveling, macadamizing, building stone roads, building or repairing bridges or in any other way in the discretion of the township board of said township providing for better construction, improvement and care of the highways in said township, in accordance with the votes of a majority of the qualified electors present and voting upon said proposition at an election held in said township on the —— day of ——, 19—, pursuant to and in full compliance with the provisions of a certain act of the legislature of the State of Michigan entitled "An act to revise, consolidate and add to the laws relating to the establishment, opening, improvement, maintenance and use of public highways, etc.," being Act No. 283 of the Public Acts of the State of Michigan for the year 1909; and it is hereby certified and declared that all acts, conditions and things required by the constitution and laws of the State of

Michigan to be done as a prerequisite to the issuance of this bond, including the giving of proper notice of said election and the holding thereof, have been properly done, happened and performed in regular and due form and time as required by law, and that the total indebtedness of said township of ——, including this bond, does not exceed any constitutional or statutory limitation.

In Witness Whereof, Said township of —— has caused its corporate seal to be hereto affixed, and this bond to be signed by its township board and countersigned by its treasurer this —— day of ——, A. D. 19—.

.....
.....
.....
.....

Countersigned:

.....
Treasurer.

(Form of Coupon.)

No..... $.....

On the —— day of ——, 19—, the township of ——, county of ——, State of Michigan, will pay to bearer the sum of —— dollars at —— for interest due on said date on its Good Road Bond dated ——, and numbered ——.

....., Supervisor.

....., Clerk.

Countersigned:

.....
Treasurer.

The vote upon said resolution was taken by yeas and nays as follows:

Yeas:

....
....

Nays:

....
....

FORMS RELATING TO BOARD OF HEALTH.

No. 35.

Notice of Appointment of Health Officer.

(Section 806.)

To R. M. O—, Secretary of State Board of Health, at Lansing:

Sir: You are hereby notified that the board of health of the township of ——, in the county of ——, did, on the —— day of ——, A. D. 19—, appoint (or, reappoint) R— S—, who is a physician (or, who is the supervisor of said township, and not a physician, or, who is not supervisor, and not a physician, as the case may be,) health officer of said township, whose postoffice address is ——.

Dated this —— day of ——, A. D. 19—.

....., Clerk of Board of Health.

No. 36.

Order for Removal of Nuisance on Private Property.

(Sections 810, 811 and 813.)

To N— B—:

The undersigned, board of health of the township of ——, in the county of ——, having found upon (describing the place with sufficient certainty,) in said township of ——, being your private property (or occupied by you), a certain nuisance, (or source of filth, or cause of sickness,) to- wit: (describing it,) which in our opinion may be and is injurious to the inhabitants of said township;

Now, therefore, you are hereby ordered to remove the same, at your own expense, within twenty-four hours after the service of this order upon you, under the penalty provided by law in case you neglect to do so.

Dated this —— day of ——, A. D. 19—.

(Official signatures of Board of Health.)

No. 37.

Complaint to Justice on Entry into Building or Vessel Being Refused.

(Section 814.)

To C— I. B—, one of the Justices of the Peace of the County of ——:

J— M—, one of the members of the board of health of the township of ——, in said county, makes complaint, and on his oath says, that on the —— day of ——, A. D. 19—, the board of health of the said township, thinking it necessary for the preservation of the lives (or health) of the inhabitants to enter a certain building (or vessel) in said township, (describing such building or vessel so that it can be identified,) for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth, or cause of sickness existing therein, did there demand admission into the said building (or vessel) for the purpose aforesaid, and that entry into the same was then and there refused. And the said J— M—, upon his oath aforesaid, further says that the said board of health have the following reasons for deeming an entry into the aforesaid building (or vessel) necessary for the purposes hereinbefore mentioned; (state the facts and circumstances as fully as they are known to the complainant.)

Wherefore the said J— M— prays that a warrant may be issued in pursuance of the statute in such case made and provided, for the destruction, removal or prevention of such nuisance, source of filth or cause of sickness as aforesaid.

.....,

Taken, subscribed and sworn to before me, this —— day of ——, 19—.

.....,

Justice of the Peace.

No. 38.

Warrant for Entry into Building or Vessel to Destroy, Remove or Prevent Nuisance.

(Section 814.)

To the Sheriff or any Constable of the County of ——:

Whereas, complaint has been made to me, on oath, by J— M—, one of the members of the board of health of the township of ——, setting forth that the said board, thinking it necessary, etc., (setting forth the substance of the complaint):

Now, therefore, in the name of the people of the State of Michigan, you are hereby commanded to take sufficient aid, and being accompanied by any two or more members of the board of health, and between the hours of sunrise and sunset, repair to the place where such nuisance, source of filth, or cause of sickness so complained of may be, and the same destroy, remove or prevent, under the direction of such members of the said board of health.

Given under my hand, this —— day of ——, A. D. 19—.

.....,

Justice of the Peace.

No. 39.

Permit to Remove a Sick Person, Nuisance, or Infected Articles.

(Section 815.)

We, the undersigned, board of health of the township of ——, in the county of ——, deeming it safe and proper, do hereby grant permission for the removal of R. S., a person who is now sick with small-pox (or as the case may be), at (describing the place), from the place last mentioned, to (describing the place within the township to which he is to be removed.)

Given under our hands, this —— day of ——, A. D. 19—.

(Official signatures of Board of Health.)

(If the removal is of a nuisance or infected articles, the form may be varied accordingly.)

No. 40.

Appointment of Persons to Restrain Travelers Coming from Infected Places.

(Section 827.)

It appearing to the undersigned, board of health of the township of ——, in the county of ——, that travelers from places infected with contagious sickness, in the State of ——, near to, (or, bordering upon) said township of ——, are likely to pass into or through said township, and that it is necessary for the public health and safety that suitable measures be taken to prevent the bringing of such infection into said township: Now, therefore, we do hereby appoint ——, ——, and ——, of said township, to attend any places by which travelers may pass from such infected places in the said State of ——, and to examine all such passengers as they may suspect of bringing with them any infection which may be dangerous to the public health, and, if need be, to restrain them from traveling until licensed thereto by the board of health of said township.

Given under our hands, this —— day of ——, A. D. 19—.

(Official signatures of Board of Health.)

No. 41.

Warrant for Providing Houses, etc., for the Sick.

(Section 828.)

To the Sheriff or any Constable of the County of ——:

It appearing to the undersigned, two of the justices of the peace of the township of ——, in said county, that it is necessary and proper so to do, you are therefore hereby commanded, in the name of the people of the State of Michigan, that under the direction of the board of health of said township, you take possession of convenient houses and lodgings and provide nurses, attendants, and other necessaries for the accommodation, safety, and relief of the sick within said township, who are infected with contagious or other sickness dangerous to the public health.

Given under our hands, this —— day of ——, A. D. 19—.

A— B—
Justice of the Peace.
C— D—
Justice of the Peace.

No. 42.

Application for Warrant to Secure Infected Baggage, Etc.

(Section 829.)

To ——, a Justice of the Peace of the County of ——:

We, the undersigned, township board of the township of ——, in the county of ——, do hereby make application for the issuing of a warrant to secure the baggage (or, clothing, or, goods,) hereinafter mentioned, which we have just cause to suspect is infected with ——, a disease dangerous to the public health, which suspicion is grounded upon the facts and circumstances following, that is to say (setting out such facts and circumstances,) that such baggage (or, clothing, or, goods,) consists of (state what) and is situated (state the place where) in said township of ——.

Dated this —— day of ——, A. D. 19—.

(Official signatures of Board of Health.)

No. 43.

Warrant for Securing Infected Baggage, Etc.

(Section 829.)

To the Sheriff or any Constable of the County of ——:

Application having been made by the township board of the township of ——, to me, for the issuing of a warrant for securing certain baggage, (or, clothing, or, goods,) to wit: (describe the baggage, clothing or goods as in the application) found in said township, and it appearing to me upon said application that there is just cause to suspect that the same is (or are) infected with a disease dangerous to the public health: Now, therefore, in the name of the people of the State of Michigan, you are required to take with you —— men, and to post said men as a guard over the house or place where such baggage, (or clothing, or goods,) shall be lodged, which said guard is required to take effectual care to prevent any person from removing or coming near to such baggage (or clothing, or goods,) until due inquiry shall be made into the circumstances thereof.

Given under my hand, this —— day of ——, A. D. 19—.

.....,

Justice of the Peace.

No. 44.

Notice of Quarantine to Be Performed by Vessels.

(Section 837.)

Public notice is hereby given, that the following regulations relating to the quarantine to be performed by all vessels arriving within the limits of the township of ——, in the county of ——, were made and adopted by the board of health of said township, on the —— day of ——, A. D. 19—, that is to say: (here insert copy of regulations).

Dated this —— day of ——, A. D. 19—.

(Signatures of Board of Health.)

[This notice to be published as provided in section 809.]

No. 45.

Householder's or Physician's Notice of a Case of Communicable Disease.

(Sections 845 and 846.)

[This report should be made at once to the local health officer by householder or physician, as soon as either householder or physician knows of a case of: Consumption, pneumonia, meningitis, typhoid fever, diphtheria, scarlet fever, whooping-cough, measles or smallpox.]

To the Health Officer of the Township of ——, County of ——, State of Michigan:

1. Name of disease ——
2. Name of person sick ——
3. Date taken sick ——
4. Residence of sick person is, No. ——, —— Street.

This notice is given by

....

(Postoffice address.)

the —— day of ——, A. D. 19—.

FORMS FOR PROCEEDINGS UNDER THE SCHOOL LAWS.

No. 46.

Notice by the Clerk of the Township Board to a Taxable Inhabitant of a District of the Time of Its Formation.

(See sections 921, 922.)

To A— B—:

Sir—The township board of the township of —— have formed a school district in said township, to be known as district No. ——, and bounded as follows: (Here insert the description.)

The first meeting of said district will be held at ——, on the —— day of ——, 19—, at —— o'clock, —— M., and you are instructed to notify every legal voter of said district of the same, at least five days previous to said meeting, either personally or by leaving a written notice at his place of residence. You will indorse on this notice a return, showing each notification, with the date or dates thereof, and deliver the same to the chairman of said meeting.

Dated this —— day of ——, 19—.

(Signed.)

C— D—,
Clerk of the Township Board.

No. 47.

Notice of First Meeting—When Made in Writing to Be Left at the House of Every Legal Voter.

(See section 921, 922.)

To C— D—:

Sir—School district No. ——, of the township of ——, having been formed by the township board, you, as a legal voter in said district, are hereby notified that the first meeting thereof will be held at ——, on the —— day of ——, 19—, at —— o'clock —— M.

Dated this —— day of ——, 19—.

(Signed.)

A— B—,
(The person appointed to give notice.)

No. 48.

Endorsement Upon the Notice (Form No. 46) by Taxable Inhabitant.

(See sections 921, 922.)

I, A— B—, hereby return the within (or annexed) notice, having notified the qualified voters of the district, as follows:

Names.	Date.	How Notified.
A..... B.....	January 1, 19.....	Personally.
C..... D.....	January 1, 19.....	Written notice.
E..... F.....	January 2, 19.....	Personally.
.....	.....	.....
.....	.....	.....

Dated this —— day of ——, 19—.

(Signed.) A— B—.

No. 49.

(See section 927.)

Notice.—A meeting of the township board of the township of —— will be held at ——, on the —— day of ——, 19—, at —— o'clock —— M., for the purpose of (here insert *every object* that is to be brought before the meeting, and if for the purpose of changing boundaries of districts, state the alterations proposed).

Dated this —— day of ——, 19—.

(Signed.) A— B—,
Clerk of the Township Board.

No. 50.

Notice to Township Board of Consent to Consolidation of School Districts.

(See section 927.)

To the Township Clerk of —— Township:

Sir—At a meeting of the legally qualified voters of school district No. ——, township of ——, held ——, 19—, the question of disbanding the present organization of said district and uniting its territory with that of other school districts was submitted. —— resident taxpayers of the district were present. The result of the vote was as follows: Number of votes in favor of disbanding the district ——; number of votes opposed to disbanding the district ——. You are hereby notified that a majority of the resident taxpayers of said school district No. ——, of the township of ——, has consented to the disbanding of said district and the consolidation of its territory with other districts, and you are hereby requested to call a meeting of the township board of —— township at the earliest possible date to dispose of the territory and property of said school district No .——, township of ——.

Dated this —— day of ——, 19—.

(Signed.) A— B—,
Director.

[This form may be readily adapted for use in case of consent to division of district.]

No. 51.

Petition by Resident Taxpayers of the School District, Giving Consent to the Disbanding of School District and Consolidation of Territory.

(See section 927.)

——, Michigan, ——, 19—.

To the Township Board of —— Township, County of ——, State of Michigan:

The undersigned, resident taxpayers of the school district No. ——, in the township of ——, do hereby give consent that the organization of said school district No. ——, township of ——, shall be dissolved, and that the territory of said school district No. ——, of the township of ——, shall be divided or consolidated with other school districts as in the judgment of the township board may be deemed best.

(Signatures.)

....
....
....

[This form may be readily adapted for use in case of consent to division of district.]

No. 52.

Notice by Township Clerk to Director, of Alteration in District.

(See section 928.)

To the Director of School District No. ——, Township of ——:

Sir—At a meeting of the township board of the township of ——, held ——, 19—, the boundaries of school district No. ——, township of ——, were altered in such manner that the territory of said district now includes the following: (Here insert the description.)

Dated this —— day of ——, 19—.

(Signed.) C— D—,
Clerk of the Township Board.

No. 53.

Notice of Meeting When Contiguous Districts Have Been United to Form a Graded School District.

(Section 939.)

School districts numbers —— and ——, of the township of ——, in the county of ——, having been united to form a graded school district, to be designated and known as school district number —— of said township.

Notice is hereby given that a meeting of said graded school district will be held at ——, in said district, on the —— day of ——, A. D. 19—, at which meeting a board of trustees for said district will be elected and such other business transacted as may be lawfully brought before it.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,
Township Board of the Township of ——.

No. 54.

Appointment of District Officers by Township Board.

(See section 946.)

The undersigned members of the township board of the township of —— do hereby appoint A— B— (director, moderator or treasurer, as the case may be) of school district No. ——, in said township, the district board having failed to appoint.

Dated this —— day of ——, 19—.

C..... D.....,
E..... F.....,
G..... H.....,
Township Board.

No. 55.

Notice to Township Board Requesting It to Fix School Site.

(See section 947.)

To the Township Clerk of —— Township:

You are hereby notified that the legally qualified voters resident in school district No. ——, township of ——, county of ——, are unable to fix a school site for said district and you are hereby requested to call a meeting of the township board of the township of ——, for the purpose of fixing a site for said school district.

Dated this —— day of ——, 19—.

(Signed.)

A— B—,
Director.

No. 56.

Certificate to Be Given to the Director of a School District by the Township Board When It Establishes a Site.

(See section 947.)

The inhabitants of school district No. ——, township of ——, having failed, at a legal meeting, to establish a site for a schoolhouse, the township board hereby certifies that it has determined that the said site shall be as follows: (Here insert description.)

Given under our hands this —— day of ——, 19—.

.....,
.....,
.....,
Township Board.

No. 57.

Form of Petition to Be Presented to Township Board for the Organization of a Township Unit District.

(Section 961.)

——, Michigan, ——, 19—

To the Township Board of —— Township, —— County, Michigan:

The undersigned, qualified school electors of the township of ——, county of ——, State of Michigan, do respectfully request that the proposition of organizing said township into a single school district under the provisions of Act No. 117 of 1909, as amended, be submitted to the people of the township at a (regular or special) election to be called by your honorable board in accordance with the provisions of section 1 of said act.

No. 58.

Notice of Meeting of Township Board to Consider Petitions.

(Section 962.)

Whereas, a petition has this day been filed with me, as township clerk of the township of ——, county of ——, State of Michigan, addressed to the township board of said township, requesting that the proposition of organizing said township into a single school district under the provisions of Act No. 117 of 1909, as amended, be submitted to the qualified school electors of said township:

Now, therefore, Notice is hereby given that a special meeting of the said township board of the township of —— is hereby called, to be held at ——, in said township, on the —— day of ——, A. D. 19—, at —— o'clock in the ——noon of that day, to consider such petition as provided by law.

Given under my hand, this —— day of ——, A. D. 19—.

....,
Township Clerk.

NOTE.—The date of the meeting shall not be more than five days after the filing of the petition.

No. 59.

Notice of Election to Vote on Question of Organizing Township as Single School District.

(Sections 962 and 963.)

To the Qualified School Electors of the Township of ——, County of ——, Michigan:

Notice is hereby given, that an election will be held on Monday, the —— day of July, 19—, at —— in said township; at which election there shall be submitted for determination by the qualified school electors of said township the proposition of organizing said township into a single school district under the provisions of Act No. 117 of 1909, as amended. The ballots upon which such question shall be submitted shall be in the following form: Shall —— (name of township) township be organized into a single school district? [ ] Yes. Shall —— (name of township) township be organized into a single school district? [ ] No.

Dated at ——, this —— day of ——, A. D. 19—.

....,
....,
....,
Township Board.

No. 60.

Notice of First Election to Choose Trustees of Township Single School District.

(Section 966.)

To the Electors of the Township of ——, County of ——, Michigan:

Notice is hereby given, that an election will be held on Monday, the —— day of July, 19—, at —— in said township; at which election there shall be chosen five trustees for the township school district of the township of ——, one for the term of one year, two for the term of two years and two for the term of three years; and such other business transacted as may lawfully come before the meeting. The polls of said election will be opened at ten o'clock in the forenoon and will be continued open until five o'clock in the afternoon.

Dated at ——, this —— day of ——, A. D. 19—.

....,
....,
....,
Township Board.

FORMS FOR USE IN UPPER PENINSULA TOWNSHIP SCHOOL DISTRICTS.

No. 61.

Petition to Township Board for Organization of Township School Districts in Upper Peninsula.

(Section 985.)

To the Township Board of —— Township, County of ——, Michigan:

We, the undersigned, a majority of the electors of the township of ——, —— county, respectfully show that the electors of said township are desirous of becoming organized into a single school district.

Now, therefore, in pursuance of Act No. 176, Public Acts, 1891, your petitioners for and in behalf of said township of ——, respectfully petition your honorable body to give notice that on Monday, the —— day of July, 19—, the officers for such organized school district will be chosen, and such other business transacted as shall be necessary thereto.

And your petitioners will ever pray.

Dated this —— day of ——, A. D. 19—.

.....,
.....,
.....,
.....,

NOTE.—This petition must be signed by a majority of the qualified electors of the township, qualified to vote at school meetings, and filed in the office of the township clerk at least fifteen days prior to the first day of July.

No. 62.

Notice of Meeting of Township Board in Upper Peninsula.

(Section 986.)

Whereas, a petition has this day been filed with me, as township clerk of the township of ——, county of ——, State of Michigan, addressed to the township board of said township, stating that the qualified electors of said township desire to become organized into a single school district, and requesting the township board to give notice, that on the second Monday in July the officers for such organized school district will be chosen and such other business transacted as shall be necessary thereto: Now, therefore, Notice is hereby given that a special meeting of the said township board of the township of ——, is hereby called, to be held at ——, in said township on the —— day of ——, A. D. 19—, at —— o'clock in the ——noon of that day, to consider such petition as provided by law.

Given under my hand, this —— day of ——, A. D. 19—.

.....,
Township Clerk.

NOTE.—The above notice shall be served upon the members of the township board of the township. The date of the meeting shall not be more than five days after the filing of the petition.

No. 63.

Notice of Election of Trustees of Township School District in Upper Peninsula.

(Sections 986 and 988.)

To the Electors of the Township of ——, County of ——, Michigan:

Notice is hereby given, that an election will be held on Monday, the —— day of July, 19—, at —— in said township; at which election there shall be chosen five trustees for the township school district of the township of ——, one for the term of one year, two for the term of two years and two for the term of three years; and such other business transacted as may lawfully come before the meeting. The polls of said election will be opened at three o'clock in the afternoon and will be continued open until seven o'clock.

Dated at ——, this —— day of ——, A. D. 19—.

....,
....,
....,
Township Board.

No. 64.

Certified Copy of Petition for Organization of Township School District in Upper Peninsula and Doings of Township Board Thereon.

(Section 987.)

STATE OF MICHIGAN, County of ——, ss.

(As in form No. 4, except note, and then continue.)

This is to certify, That the above is a true and correct copy of a petition for the organization of a township school district in the township of ——, county of ——, filed with the clerk of said township according to law; and that pursuant to notice, we, the undersigned, constituting the township board of the township of ——, in said county, did meet on the —— day of ——, A. D. 19—, at —— o'clock in the ——noon, at ——, in said township, (that being the time and place specified in said notice), and examine the above petition, and that we found that a majority of the electors qualified to vote at the preceding election had signed said petition, and we further certify that we gave notice of the election of officers for said township school district according to law.

Dated at ——, this —— day of ——, A. D. 19—.

....,
....,
....,
Township Board.

NOTE.—This certified copy is to be filed with the county clerk and county commissioner of schools.

No. 65.

Order for Raising Money in Upper Peninsula Township School Districts in Case of Neglect or Refusal of Electors.

(Section 995.)

Whereas, It appears to us that at the annual school meeting of the township of ——, held on Monday, the —— day of July, A. D. 19—, the electors thereof neglected (or refused) to vote such sums of money as were necessary to defray the ordinary school expenses of the township school district of the township of ——,

county of ——; Now, therefore, At a regular meeting of the board of education of said township held on this —— day of ——, A. D. 19—, the sum of —— dollars is hereby voted by us to be raised by tax upon the taxable property in said township for the purpose aforesaid.

Witness our hands the day and year last aforesaid.

.....,
.....,
.....,
.....,
.....,
Board of Education of the Township of ——.

No. 66.

Statement by Secretary to Supervisor of Amount of Taxes to Be Raised for School Purposes in Upper Peninsula Township School Districts.

(Section 995.)

STATE OF MICHIGAN, County of ——, ss.

To the Supervisor of the Township of ——, County of ——:

I do hereby certify that the sum of —— dollars was determined by the board of education of the township of —— at a regular meeting held at ——, on the —— day of ——, A. D. 19—, to be raised by tax for school purposes for the township school district of the said township.

In testitmony whereof, I have hereunto set my hand, this —— day of ——, A. D. 19—.

[L. S.]

.....,
Secretary of Board of Education.

FORMS RELATING TO THE DUTIES OF SUPERVISOR.

No. 67.

Notice to Township Treasurer of Amount of State and County Taxes.

(Section 1083.)

To A— B—, Township Treasurer of the Township of ——:

You are hereby notified, that the amount of county taxes apportioned to the township of ——, for the year ——, is the sum of —— dollars, and that the amount apportioned to said township for State purposes for said year, is the sum of —— dollars.

Dated this —— day of ——, A. D. 19—.

.....,
Supervisor.

No. 68.

Supervisor's Statement of Drain Taxes to Township Treasurer.

(Section 1119.)

To ——, Township Treasurer of the Township of ——:

Herewith find an itemized statement of the several amounts assessed for the year 19—, upon the township of ——, at large, for the construction of the several drains named herein, and the amount for each particular drain; said several amounts being assessed as a part of the general township tax and being included in that column, as follows, viz.:

County Drains.

.....	.....	.....	....Drain.....	.....	.....	$.....
.....	.....	.....	.... "	.....	.....	.....
.....	.....	.....	.... "	.....	.....	.....
.....	.....	.....	.... "	.....	.....	.....
				Total.....		$.....

To ——, Township Treasurer of the Township of ——:

All taxes collected on account of drains herein designated shall be returned to the county treasurer to be disbursed by him.

Given under my hand, this —— day of ——, A. D. 19—.

....,
Supervisor of the Township of ——.

NOTE.—It is proper that this statement should be attached by the supervisor to the general assessment roll of the township, the same as the warrant.

No. 69.

Indorsement of Supervisor on Drain Assessment Roll on File in Clerk's Office.

(Section 1119.)

STATE OF MICHIGAN, County of ——, ss.

I, ——, supervisor of the township of ——, in said county, do hereby certify, that I have spread upon the annual assessment roll of the said township of ——, for the year 19—, the several descriptions enumerated on the within drain assessment roll, with the amount of tax for benefits set opposite each description respectively, as follows, to wit: (Give each description, with the amount of tax spread for that year.)

Given under my hand, this —— day of ——, A. D. 19—.

....,
Supervisor.

No. 70.

Certificate of Supervisor as to Amount of Taxable Property in Part of Fractional School District in His Township.

(Section 1124.)

To ——, Supervisor of the Township of ——, in the County of ——:

I hereby certify that the amount of taxable property in that part of fractional school district No. ——, of the townships of —— and ——, lying within the said township of ——, is —— dollars.

Dated this —— day of ——, A. D. 19—.

....,
Supervisor of the Township of ——.

No. 71.

Supervisor's Statement to Treasurer of Amount of School and Library Taxes.

(Sections 1125 and 1126.)

Statement of school and library taxes, etc., in the township of ——, county of ——:

Amount of school and library taxes..... $.....
Amount raised for district purposes in school district No. 1..... $.....
Amount raised for district purposes in school district No. 2..... $.....
Amount belonging to new district No. —, on division of district No. — $.....
Amount of one-mill tax levied in that part of fractional school district No. —, lying within the township of —— ..... $.....

Judgments assessed under provisions of tax laws:

Name of person to whom payable.	Amount.
.....	$.....
.....	$.....

Dated this —— day of ——, A. D. 19—.

....., Supervisor.

No. 72.

Notice of Supervisor of Township Where a Pauper Is Supported, to Supervisor of Township Where He Belongs.

(Section 1188.)

To the Supervisor of the Township of ——:

You are hereby notified that A— B—, a pauper, who has gained a settlement in the said township of ——, in the county of ——, to which he belongs, is in the township of ——, in said county, and is supported at the expense of the township of ——, of which the undersigned is supervisor, and you are therefore required to provide for the relief and support of the said pauper.

Dated this —— day of ——, A. D. 19—.

.....
Supervisor of the Township of ——.

No. 73.

Order by Supervisor, Commissioner of Highways, or Justice of the Peace to Inhabitants, to Aid in Extinguishing Fires.

(Sections 1214 and 2003.)

To A— B—, C— D—, and E— F—:

You are hereby severally ordered and directed forthwith to repair to the place where a fire is now prevailing in the woods (or, on the prairies,) in the township of ——, in your vicinity, so as to endanger property, and there to assist in stopping the progress of such fire, or extinguishing the same.

Dated this —— day of ——, A. D. 19—.

....., Supervisor.

No. 74.

Return to County Clerk of Names and Addresses of Township Officers.

(Section 1234.)

To the County Clerk of —— County:

I hereby certify and return, that the following are the names of the township officers duly elected at the annual township meeting held in the township of ——, in said county, on the —— day of ——, A. D., 19—, and who have duly qualified, with the postoffice address of each of said officers:

Office.	Postoffice.
Supervisor.....	.....
Treasurer.....	.....

(Naming all officers who were elected and have qualified.)

....., Township Clerk.

No. 75.

Notice to County Clerk of Election of Justices of the Peace.

(Section 1235.)

To the County Clerk of the County of ——:

You are hereby notified that at the annual township meeting held in the township of ——, in said county, on the —— day of ——, instant, D— F— was elected to the office of justice of the peace of said township for the full term of four years from the fourth day of July next. You are further notified that at the township meeting aforesaid, E— H— was elected to fill the vacancy in said office of justice of the peace, occasioned by the death (or, as the case may be) of G— I—, the last incumbent of said office, whose term will expire on the fourth day of July, A. D. 19—.

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

FORMS RELATING TO TOWNSHIP CLERK.

No. 76.

Official Bond of Township Clerk.

(Section 1236.)

Know All Men by These Presents, That we, A— B—, as principal, and C— D— and E— F—, as sureties, are held and firmly bound unto the township of ——, county of ——, in the sum of —— dollars, lawful money, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each of them, firmly by these presents.

Sealed with our seals, and dated this —— day of ——, A. D. 19—.

Whereas, the above bounden A— B— was elected to the office of township clerk of the township of ——, at the annual (or, at a special) township meeting held therein on the —— day of ——, A. D. 19—.

Now, therefore, the condition of this obligation is such, that if the said A— B— shall well and faithfully in all things discharge the duties of his said office according to law, and shall safely keep all the records, books and papers of said township in the manner required by law, and deliver the same on demand to his successor in office, then this obligation is to be void; otherwise to be and remain in full force and effect.

A..... B..... [SEAL.]
C..... D..... [SEAL.]
E..... F..... [SEAL.]

Signed, sealed and delivered in the presence of

.....
.....

(Affidavit of sureties as in Form No. 15.)

Approval of the Above Bond.

We, the township board of the township of ——, do hereby approve of the within bond, and of the sureties therein named.

Dated this —— day of ——, A. D. 19—.

(Signatures of members of board.)

No. 77.

Statement by Clerk to Supervisor, of Amount of Taxes to Be Raised for Township Purposes.

(Section 1247.)

To the Supervisor of the Township of ——:

I do hereby certify that the following is a true and correct copy of all statements on file or of record in my office, of moneys proposed to be raised therein by taxation for all purposes, and that the aggregate amount thereof is the sum of —— dollars (here copy the statements referred to in full).

In testimony whereof I have hereunto set my hand, this —— day of ——, A. D. 19—.

....., Township Clerk.

No. 78.

Notice to County Treasurer of Appointment of Township Treasurer.

(Section 1249.)

To the County Treasurer of the County of ——:

You are hereby notified that the township board of the township of ——, in said county, have appointed J— R— treasurer of said township, for the remainder of the term to fill the vacancy occasioned by the refusal of A— B—, who was elected to said office at the last annual township meeting, to serve therein, (or, as the fact may be).

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

No. 79.

Notice to the Commissioner of Highways to Be Given By Township Clerk in Case of Appeal.

(Sections 1256, 1258 and 1471.)

To the Commissioner of Highways of the Township of ——, County of ——:

Take notice, That M— L— has appealed to the township board of township of ——, from your determination in (laying out or refusing to discontinue) the following highway: (here describe highway). The said township board will, on the —— day of ——, A. D. 19—, at ten o'clock in the forenoon, proceed to view the premises, and hear the appeal made by said M— L— from your determination.

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

The above may be altered so as to apply to an appeal from an award of damages.
NOTE.—Allow for ten full days' service of this notice.

No. 80.

Notice to Appellant.

(Sections 1256, 1258 and 1471.)

To M— L—:

You will pleace take notice, That the township board of the township of ——, —— county, will, on the —— day of ——, A. D. 19—, at ten o'clock in the forenoon, proceed to view the premises and hear the appeal made by you from the determination of the commissioner of highways of the said township of —— in (laying out or refusing to discontinue) the following highway: (describe the highway).

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

This form may be altered to apply to an appeal from an award of damages.
NOTE.—Allow for ten full days' service of this notice.

No. 81.

Notice to Person Appointed Overseer of Highways to Fill a Vacancy.

(Section 1269.)

To ——:

You are hereby notified that you have been duly appointed, by warrant under the hand of the commissioner of highways of the township of ——, and filed in the office of the township clerk, to the office of overseer of highways of road district number ——, in said township, to fill the vacancy in said office occasioned by the refusal of T— E—, who was elected to said office at the last annual township meeting, to serve therein (or, as the fact may be,) and you are required to give written notice of your acceptance of said office to the township clerk within ten days after receiving this notice of your appointment.

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

No. 82.

Township Clerk's Annual Statement to Supervisor.

(Section 1273.)

Clerk's Office, Township of.....
....., A. D. 19..

To ——, Supervisor of the Township of ——:

Sir—Herewith find the annual statement of the several amounts of drain taxes to be assessed in the township of ——, for the year 19—; said statement to be laid before the board of supervisors of —— county, at their next annual meeting:

Subdivision.	Sec.	Town.	Range.	Per cent determined on by		Am't of tax.		Remarks.
				Commissioner.	Board of Review.	Dols.	Cts.	
—of—at large.								
Total.....								

(Give a copy of each drain special assessment roll, with the amounts to be assessed for the year, and then add the following certificate):

I hereby certify, That the above and foregoing is the "special assessment roll of —— drain," for the —— of ——, county of ——, State of Michigan, and that I have entered therein a correct description of all the tracts, parcels and subdivisions of lands benefited by said drain, as provided by law, and that I have placed opposite each description the amount of the per cent. heretofore determined upon by ——, also the amount of the per cent. apportioned by the said —— to the said—— of —— at large.

Given under my hand, this —— day of ——, A. D. 19—.

.....,
County Drain Commissioner of the —— of ——.

County of ——, Township of ——, ss:

I, ——, township clerk of the township of ——, in said county of ——, do hereby certify the above and foregoing to be true and correct copies of the several drain special assessment rolls now on file in my office, with the amounts of taxes thereon to be levied for the year 19—; that said rolls set forth a correct statement of the several amounts of drain taxes to be assessed upon said township of —— at large, for the year 19—, and of the whole thereof; that the several amounts to be raised for each particular drain for the year 19— are correctly specified therein; and also that it is a true and correct statement of all the descriptions of lands assessed for benefits for each drain, with the amount to be assessed upon each description for the year 19—, as determined by the county drain commissioner; *—— as appears from the said special assessment rolls on file in my office.

The said several rolls being summarized as follows, to-wit:

Description of roll.	Assessment upon township at large.		Assessment for benefits.		Total.	
	Dollars.	Cts.	Dollars.	Cts.	Dollars.	Cts.
.. ..Drain						
.....Drain						
.....Drain						
Total.....						

Given under my hand, this —— day of ——, A. D. 19—.

....., Township Clerk of the Township of ——.

In case of an appeal insert in space indicated by the * the following: "and as decided by the board of review."

In case of city, the above statement must be made by city clerk or recorder and this form can be changed accordingly.

No. 83.

Notice to Township Clerk of Taxes Voted by District Board Under the Provisions of Section 1286.

(Section 1286.)

To the Clerk of the Township of ——, County of ——:

You are hereby notified that the district board of school district No. ——, township of ——, at a meeting of said board held on the —— day of ——, 19—, estimated and voted taxes for the following purposes, to be levied upon the property of said school district for the ensuing year:

Teachers' wages	$.....
School furnishings and appurtenances	.....
Care of property	.....
Water supply	.....
Premium on bonds	.....
Transportation of pupils	.....
Record books and blanks	.....
Deficiencies	.....
Services of officers	.....
Flag and flag staff	.....
Free textbooks	.....
General tuition	.....
Tuition of eighth grade pupils	.....
Total	$.....

Said sums you will report to the supervisor to be assessed upon the taxable property of said district in accordance with the provisions of law.

Dated at ——, this —— day of ——, 19—.

A..... B....., Director.
C..... D....., Moderator.
E..... F....., Treasurer.

No. 84.

Certificate by the Township Clerk to the Supervisor, of District Taxes to Be Assessed.

(Section 1290.)

Supervisor of the Township of ——, County of ——:

Sir—I hereby certify that the following is a correct statement of moneys proposed to be raised by taxation for school purposes in each of the several school districts of this township, as the same appears from the reports of the district boards of the several districts now on file in my office:

Districts.	For teachers' wages.	For building purposes.	For free text-books.	For paying indebtedness.	For general expenses.	For library.	For tuition.	For	For	Total.
District No. 1.....	$.....	$.....	$.....	$.....	$.....	$.....	$.....	$.....	$.....	$.....
District No. 2, fr'l.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Which amounts you will assess upon the taxable property of each of said districts in accordance with the provisions of law.

Dated this —— day of ——, A. D. 19—.

.....,
Township Clerk.

No. 85.

Notice by the Township Clerk to the Township Treasurer, of the Apportionment of Moneys to Districts.

(Section 1294.)

To the Treasurer of the Township of ——, County of ——:

Sir—Herewith find a statement of the number of children of school age in each school district of this township, entitled to draw public moneys, and the amount of moneys apportioned to each of said districts:

Districts.	No. of children in district.	Primary school interest fund.	Library moneys.	One-mill tax.	Surplus dog tax.	District taxes.	Special funds.	Total to each district.
District No. 1.....	.....	$.....	$.....	$.....	$.....	$.....	$.....	$.....
District No. 2, fr'l.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	.....	$.....	$.....	$.....	$.....	$.....	$.....	$.....

Dated this —— day of ——, A. D. 19—.

.....,
Township Clerk.

No. 86.

Notice by Township Clerk to Directors, of Moneys Belonging to the Districts.

(Sections 1294 and 1295.)

A— B—, Director, School District No. ——, Township of ——:

Sir—The amount of school moneys apportioned to school district No. ——, township of ——, is as follows:

Primary school interest fund	$.....
Library moneys received from county treasurer	.....
One-mill tax	.....
Surplus dog tax	.....
District taxes	.....
Special funds	.....
Total	$.....

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

No. 87.

Clerk's Certificate to Supervisor of Amount to Be Assessed Under Free Text Book Act.

(Section 1298.)

To ——, Supervisor of the Township of ——:

Sir—The amount of money necessary to be raised in school district No. ——, or said township, to comply with the conditions of an act to regulate the uniformity of and provide free text books in public schools, etc., is —— dollars.

Dated this —— day of —— A. D. 19—.

....., Township Clerk.

No. 88.

Notice to Be Given by Clerk to Person Elected, and Whose Name Is Not on the Poll List.

(Sections 239, 240 and 1326.)

To ——:

Sir—You are hereby notified, that at the annual township meeting, held in the township of ——, in the county of ——, on the —— day of ——, A. D. 19—, you were duly elected to the office of —— of said township.

Dated this —— day of ——, A. D. 19—.

....., Township Clerk.

No. 89.

Decision of Township Board on Appeal.

(Sections 1257 and 1472.)

Whereas, M— L—, of ——, hath appealed to the township board of the township of ——, county of ——, from the determination of the commissioner of highways of said township, in the matter of the laying out (or discontinuance) of the following highway: (describe the highway); And Whereas, After due notice to the parties, pursuant to statute, we, the said township board, did proceed to view the premises, and hear the proofs and allegations of the parties; therefore, be it known, that we, the said township board, do consider and decide that the determination of said highway commissioner (laying out or discontinuing) said highway was proper, and is hereby confirmed (or that said determination was erroneous, and is hereby reversed).

Given under our hands this —— day of ——, A. D. 19—.

.....,
.....,
.....,
Township Board.

[This is to be filed in the office of the township clerk.]

NOTE.—The above may be changed so as to make it applicable to a decision on an appeal from an award of damages.

FORMS RELATING TO TOWNSHIP TREASURER.

No. 90.

Official Bond of Township Treasurer.

(Sections 1358 and 1359.)

(As in Form No. 76, to that part commencing "Whereas," and then as follows:)

Whereas, the above bounden A—B—, was elected to the office of treasurer of the township of ——, at the annual (or at a special) township meeting held therein on the —— day of ——, in the year last above mentioned:

Now, therefore, the condition of this obligation is such, that if the said A— B— shall well and faithfully in all things discharge the duties of his said office, and shall faithfully and truly account for and pay over according to law, all moneys which shall come into his hands as such treasurer, then the above obligation is to be void; otherwise to be and remain in full force and effect.

(Signatures as in Form No. 76.)

Signed, sealed and delivered in the presence of

.....
.....

(The same affidavit of sureties as in Form No. 15.)

Approval to Be Endorsed on the Above Bond.

I do hereby approve of the within bond, and of the sureties therein named.

Dated this —— day of ——, A. D. 19—.

.....,
Supervisor.

No. 91.

Notice by Township Treasurer of Levy and Sale for Taxes.

(Section 1379.)

Public notice is hereby given that by virtue of a warrant for the collection of taxes in the township of ——, in the county of ——, to me directed and delivered, I have levied upon and taken the following goods and chattels of E— B—, viz.: (insert list of articles taken) which I shall sell at public auction at the dwelling-house of I— M— (stating the place), in the said township of ——, on the —— day of ——, A. D. 19—, at 10 o'clock in the forenoon of that day.

Dated this —— day of ——, A. D. 19—.

....., Township Treasurer.

No. 92.

Township Treasurer's Affidavit of Unpaid Taxes.

(Section 1388.)

STATE OF MICHIGAN, County of ——, ss.

A— B—, being duly sworn, deposes and says that he is township treasurer of the township of ——, in said county; that the foregoing is a true statement of the taxes remaining unpaid upon the assessment roll of said township for the year A. D. 19—; that the sums mentioned in such statement remain unpaid; and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the person or persons charged with or liable to pay such sums, whereupon he could levy the same.

A— B—.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

....., County Treasurer.

No. 93.

Notice by Township Treasurer to Township Clerk of Amount of School Moneys.

(Section 1416.)

To ——, Township Clerk of the Township of ——:

You are hereby notified, that the amount of school taxes on the assessment roll for the year A. D. 19—, is the sum of —— dollars; which sum is held by me subject to the warrant of the proper district officers, or of the persons entitled thereto, respectively.

Dated this —— day of ——, A. D. 19—.

....., Township Treasurer.

No. 94.

Notice by the Township Treasurer to the Township Clerk of Moneys to Be Apportioned to Districts.

(Section 1417.)

To the Clerk of the Township of ——, County of ——:

Sir—I have now in my hands for apportionment to the several school districts of this township the following moneys:

Primary school interest fund	$.....
Library moneys received from county treasurer	.....
One-mill tax	.....
Surplus dog tax	.....
District taxes	.....
Special funds	.....

Dated this —— day of ——, A. D. 19—.

....,
Township Treasurer.

FORMS RELATING TO COMMISSIONER OF HIGHWAYS.

No. 95.

Highway Commissioner's Bond.

(Sections 1435, 1436 and 1873.)

Know all men by these presents, That we, A— B—, of the township of ——, as principal, and C— D— and E— F—, of the township of ——, in the county of ——, as sureties, are held and firmly bound unto the township of ——, in said county, in the penal sum of one thousand dollars, to be paid to the said township of ——, to which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this —— day of ——, A. D. 19—.

Whereas, The above bounden A— B— has been duly elected commissioner of highways in and for the said township of ——, to serve for the term of one year from the first Monday in April, in the year 19— (if it be a case of vacancy, say "to serve until the —— day of ——, A. D. 19—"), and until a successor shall be duly elected and qualified:

Now, therefore, The condition of this obligation is such that, if the said A— B— shall faithfully perform the duties of his office, and faithfully disburse all moneys that may come into his hands by virtue of his office, then the above obligation to be void and of no effect, otherwise to remain in force.

.....[Seal.]
.....[Seal.]
.....[Seal.]

Signed, sealed and delivered in presence of

.....
.....

STATE OF MICHIGAN, County of ——, ss.

C— D— and E— F—, sureties, on the foregoing bond of A— B—, as commissioner of highways in and for the township of —— in said county, being duly sworn, depose and say, each for himself, that he is worth the sum hereinafter specified, viz.: The said C— D—, the sum of $——, and the said E— F, the sum of $——, in unincumbered property, not exempt from execution under the laws of this State, after payment of all just debts, claims and liabilities. And further deponents say not.

C— D—.
E— F—.

Subscribed and sworn to before me, this —— day of ———, A. D. 19—

.....
Notary Public.
My commission expires ———

I approve of the above bond and of the sureties thereon.

.....
Supervisor or Township Clerk.

This form of bond may be altered for an overseer's bond.

NOTE.—Sureties on any official bond must justify their pecuniary responsibility in amount, in the aggregate equal to the penal sum of the bond, which justification must be endorsed on or attached to the bond, and without which the bond cannot legally be received or approved. Receiving or approving an official bond not having such justification of sureties endorsed thereon or attached thereto, is a misdemeanor and may be punished as such, and the person or persons guilty of such misdemeanor shall be liable for all damages sustained by reason of such defective bond. See sections 195-197, C. L. 1915.

No. 96.

Order on Township Treasurer by Commissioner of Highways.

(Section 1442.)

To the Treasurer of the Township of ——:

Pay to C— D—., or order —— dollars, payment in full for materials furnished by him for (state for what).

Witness my hand, this —— day of ——, A. D. 19—.

....., Commissioner of Highways of the Township of ———

Countersigned:

.....
Township Clerk.

[The following should accompany the foregoing.]

The undersigned, commissioner of highways of the township of ——, doth hereby certify that the materials mentioned in the accompanying order were actually furnished and used for (state whatever the order is drawn for).

Witness my hand, this —— day of ——, A. D. 19—.

....., Commissioner of Highways of the Township of ——.

No. 97.

Application to Lay Out a Highway.

(Sections 1465 and 1466.)

To the Commissioner of Highways of the Township of ——, County of ——:

The undersigned freeholders of the said township of ——, do hereby make application to you to lay out a highway in a part of said township, not included within the corporate limits of any city or village, and respectfully ask that you will proceed to lay out a highway as follows: Commencing at (here insert a description of the route of the proposed highway).

Dated this —— day of ——, A. D. 19—.

(To be signed by seven freeholders of the township.)

No. 98.

Application for Discontinuance of Highway.

(Sections 1465 and 1466.)

To the Commissioner of Highways of the Township of ——, County of ——:

The undersigned, freeholders of said township of ——, hereby make application to you to discontinue the highway in said township running as follows: (describe the road to be discontinued) which said highway is not included within the corporate limits of any city or village.

Dated at ——, this —— day of ——, A. D. 19—.

(To be signed by seven freeholders of the township.)

NOTE.—If the application be to alter a highway, the above can be altered to suit the case; and the extent to which the route is proposed to be changed should be set forth in the application.

No. 99.

Notice to Owner or Occupant.

(Section 1467.)

To Mr. ———:

Take notice, That application pursuant to law has been made to the undersigned commissioner of highways of the township of ——, by at least seven freeholders of said township, to lay out a highway in said township, to be run as follows: Commencing (here describe route of proposed highway) and which highway will pass through lands owned or occupied by you. You are therefore hereby notified that the undersigned commissioner of highways will meet at the house of B— S—., in said township, on the —— day of ——, A. D. 19—, at — o'clock — M., to proceed to view the premises described in said application and notice, and ascertain and determine the necessity of laying out the highway above described, and to appraise the damages thereon.

Dated this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

[This form with the necessary alterations may be used for altering or discontinuing a highway.]

NOTE.—This notice must be issued within five days after application is made, and served at least ten days before the day of meeting, on the owners or occupants of lands through which it is proposed to lay out, alter, or discontinue said road, either personally or by copy left at the residence of said owner or occupant, or, in case of non-resident owners, by posting up the same in three public places in the township ten days before the time of meeting, and may be served upon any railroad company by leaving a copy thereof with the agent in charge of any ticket or freight office of the company, on the line thereof.

No. 100.

Affidavit to be Attached to Copy of Notice Showing Service Thereof.

(Section 1468.)

STATE OF MICHIGAN, County of ——, ss.

A B, being duly sworn, deposes and says, that he is commissioner of highways of the township of ——, in said county of ——, and that on the —— day of ——, 19—, he served a notice for (laying out, altering, or discontinuing, as the case may be), a highway, a copy of which is hereto annexed, upon (give names of persons or companies) by (here state manner of service).

.....,

Commissioner of Highways of the Township of ——.

Subscribed and sworn to before me, this —— day of ——, A. D. 19—.

.....

Notary Public.

My commission expires ——.

(Attach copy of notice.)

No. 101.

Return Made by Commissioner on Application for Laying Out Highway.

(Section 1470.)

Whereas, Application was made to the undersigned, commissioner of highways of the township of ——, by —— (seven or more, as the case may be) freeholders of said township to lay out a highway as hereinafter described;

And Whereas, The said highway commissioner did give notice of the said application and of the time and place of hearing thereof, to the owners and occupants of lands through or adjoining which application was made for laying out the said highway, and like notice to the —— railroad company, all of which notices were given ten days before the time appointed for the hearing, and affidavit of service was made in each case;

And Whereas, The said commissioner did on the —— day of —— A. D. 19—, being the day of hearing appointed in said notice, proceed to view the premises described in said application and notice, for the purpose of determining the necessity for laying out said highway and to determine the damages to be awarded therefor;

Now, therefore, It is hereby determined by said highway commissioner that the said highway as hereinafter described is necessary, said highway being described as follows: (give the description as in the application, and if a survey be made of the line of said highway add: according to a survey thereof which the undersigned commissioner has caused to be made of the line of said highway, filed in the office of township clerk).

And it is further determined, That damages are hereby awarded to the following named persons, being all the owners and occupants of lands through or adjoining which it is proposed to lay out the said highway, who have made a claim for damages, said award of damages being as follows:

To A B, owner of (give description) —— dollars and —— cents.

To C D, occupant of (give description) —— dollars and —— cents.

And it is further determined, That the highway as above described is hereby laid out and established.

Given under my hand this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

No. 102.

Return of Commissioner Discontinuing a Highway.

(Section 1470.) ....

The undersigned, commissioner of highways of the township of ——, in the county of ——, hereby makes return that upon the application made to him in pursuance of law, by seven or more freeholders of said township to discontinue the highway known and described as follows: (describe highway), the said highway commissioner did, after due notice given according to law, proceed on the —— day of ——, A. D. 19—, to view the premises described in said application and notice, and ascertain and determine the necessity for discontinuing said highway. And he doth further return that he considers and determines that said described highway shall be and the same is hereby discontinued, and that he does not find any damage sustained by said discontinuance.

Given under my hand this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

NOTE.—If the application was for altering the route of a highway, the above return can be changed to correspond therewith. The return is to be filed in the township clerk's office, with the application and notice attached thereto.

No. 103.

Order of Commissioner Laying Out Road.

(Section 1470.)

[The law does not seem to require this order but it may be well to use it.]

COUNTY OF ——, Township of ——, ss.

Application having been made to the undersigned, commissioner of highways of said township, by at least seven freeholders therein, for laying out a highway as hereinafter described, and the said commissioner having pursuant to statute, ascertained and determined the necessity of taking the property required for such highway, and appraised the damages therefor, and having duly made return of his proceedings, and the same being filed in the office of the township clerk, the said commissioner doth hereby order and determine that a highway be and the same is hereby laid out and established as follows: (Here insert description of route, as in application and return.)

Given under my hand this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

[This form can be readily adapted to an order for altering or discontinuing a highway.]

Section 104.

Appeal From Decision of Commissioner to Township Board.

(Sections 1471 and 1594.)

To the Township Board of the Township of ——, County of ——:

I, M— L—, of the said township of ——, conceiving myself aggrieved by the determination of the commissioner of highways of said township of ——, in (laying out or refusing to discontinue) the following described highway: (here describe road), do hereby appeal to you from such determination. The grounds upon which this appeal is made are as follows: (state the grounds). This appeal is made to reverse the entire determination of said commissioner or to reverse that part of the determination of said commissioner: (Here specify the part sought to be reversed).

Dated this —— day of ——, A. D. 19—.

.....

[To be filed with the township clerk.]

NOTE.—In an appeal from the award of damages, the above may be altered so as to make it applicable.

No. 105.

Notice to Be Given to Commissioners of Adjoining Towns.

(Section 1474.)

To the Commissioner of Highways of the Township of ——:

You are hereby notified that application, according to law, has been made to the undersigned, commissioner of highways of the township of ——, to (lay out, alter or discontinue) a highway upon the line between the said township of —— and the said township of ——, described as follows: (Describe the highway). And you are also notified that I have appointed the —— day of —— A. D. 19—, at — o'clock in the forenoon, at the house of ——, to proceed and view the premises described in said application, as above set forth, and ascertain and determine the necessity of (laying out, etc.), such highway.

Given under my hand this —— day of ——, A. D. 19—, at the township of ——, in the county of ——.

.....

Commissioner of Highways of the Township of ——.

NOTE.—This notice should be served in the manner provided in Sec. 1467.

No. 106.

Agreement for Line Road Between Township and City or Village.

(Sections 1475 and 1476.)

Application having been made to the undersigned, A— B—, commissioner of highways of the township of ——, in the county of ——, by at least seven freeholders therein, for laying out a highway on the boundary line between said township of ——, and the city (or village) of ——, in said county, and having, pursuant to law, met with the undersigned, C— D—, commissioner of highways (or other officer having authority to lay out streets), of the city (or village) of ——, in said county, and having determined the necessity for taking property required for such line road, and appraised the damages therefor, the said commissioners do hereby order and determine that a line road between said township, and said city (or village) be, and the same is hereby laid out and established as follows: (here insert the description showing the portion of such line road to be in such township and the portion in such city or village.) And we, the said commissioner of highways of the township of ——, and the said commissioner of highways (or other officer) of the said city (or village) of —— pursuant to law, do hereby jointly agree that such highway, so laid out as above described, shall be a line road between said township of ——, and the city (or village) of ——, in said county, and do further determine and agree that the said line road shall be opened and improved on or before the —— day of ——, A. D. 19—. And the said commissioners do further agree and determine that said township of ——, shall open, maintain, and improve that portion of said line road described as follows: (here set forth the portion of the road to be opened and improved by the township.) And that said city (or village) shall open, maintain, and improve that portion of said line road described as follows: (here set forth the portion to be opened, etc., by the city or village).

Given under our hands this —— day of ——, A. D. 19—.

.....
Commissioner of Highways of the Township of ——.

.....
Commissioner of Highways of the City of ——.

[This is to be recorded in the township, and city or village.]

No. 107.

Notice to Party to Remove Fences.

(Section 1482.)

To A— P—:

Sir—The commissioner of highways of the township of ——, county of —— having laid out and established, according to law, a public highway which runs through certain lands and premises, (owned or occupied), by you, which said land and premises are described as follows: (describe them), and the damages for the taking of the same having been ascertained and (paid or tendered) to the owner or occupants thereof, you are hereby required to remove your fences from within the bounds of said highway, within —— days after service upon you of this notice, or the said commissioner of highways will after the expiration of the said —— days, proceed to enter upon said premises and remove the said fences.

Dated this —— day of ——, A. D. 19—.

.....
Commissioner of Highways of the Township of ——.

[The time of this notice must be not less than sixty days; nor in townships can party be required to move his fences between the first day of May and the first day of September.]

No. 108.

Notice to Railroad Company to Provide Superintendent for Construction of Crossing.

(Section 1490.)

Take notice, That a public highway has been duly established in the township of ——, county of ——, as follows: Commencing at (here describe the highway), which highway crosses the road of your company at (here state the place of crossing). Plans for such crossing have been furnished by the Railroad Commission, and the highway commissioner desires to commence the work of constructing such crossing on the —— day of —— at —— o'clock A. M., 19—. You are required to furnish a competent superintendent or trackman at the time above named to superintend the construction of such crossing in accordance with plans and specifications for such crossing as provided by the Railroad Commission of this State.

Given under my hand this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

To ——— (give name of company to be notified).

No. 109.

Annual Account of the Commissioner of Highways to the Township Board.

(Section 1499.)

To the Township Board of the Township of ——, County of ——:

The following is the annual account of the commissioner of highways for the year ending the —— day of April, 19—.

ROAD REPAIR TAX.

Amount received		$.....
Amount expended for	$.....	.....
Amount expended for	$.....	.....
Amount expended for	$.....	.....
Outstanding liabilities	$.....	
Total		$.....
Amount on hand		$.....

HIGHWAY IMPROVEMENT TAX.

Amount received		$.....
Amount expended for	$.....	
Amount expended for	$.....	
Amount expended for	$.....	
Outstanding liabilities	$.....	
Total		$.....
Amount on hand		$.....

I have received from .....

(Other sources from which received.)

the sum of $.....

The improvements which have been made on the roads and bridges in said township during the year are as follows: (state the improvements). The condition and situation of the roads and bridges of said township are as follows: (state the condition here).

I estimate that the amount of road repair tax that should be assessed for the next ensuing year is $.....

I estimate that the amount of highway improvement tax that should be assessed for the next ensuing year is $.....

The following improvements, in my opinion, are necessary to be made on the roads and bridges in said township, viz: (state the improvements), and the expense of making such improvements I estimate to be $.....

Given under my hand this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

No. 110.

Notice to Remove Fence to Permit Working of Highway.

(Section 1591.)

To Mr. S— W—:

Take notice, That the highway in the township of ——, in the county of ——, adjoining your land, and running as follows: Commencing at (here describe highway) has, by reason of the falling and washing away of the bank on that portion of said highway adjoining your land, at a place (set forth the place washed away) become reduced in width to less than fifty feet, and you are therefore hereby notified, that you are required to remove the fence (hedge, or other structure forming the enclosure) back from the bank far enough to admit of the opening and working of said highway to the full width of fifty feet, and that upon failure to comply therewith, within thirty days after service of this notice upon you, I shall proceed to remove the same.

Dated this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

No. 111.

Notice of Commissioner's Intention to Open Road in Rear of Dwelling.

(Section 1593.)

Mr. S—. W—.:

Take notice, That the highway in the township of ——, running on the side of the dwelling house now occupied by you and situate on the (here describe the land), cannot by reason of the proximity of said dwelling to the river on the opposite side of said highway be opened and maintained to the width of thirty-five feet; now, therefore, you are hereby notified that it is my intention to open a highway at the rear of said dwelling house, the full width of fifty feet or over, unless within thirty days after service of this notice upon you, said dwelling house shall be moved so as to enable me to open and maintain said road the full width of thirty-five feet.

Given under my hand, this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

No. 112.

Order of Commissioner of Highways to Remove Obstructions in Cases of Encroachment.

(Section 1597.)

County of ——, Township of ——, ss:

The undersigned, commissioner of highways of the township of ——, county of ——, having ascertained that the public highway in said township, running (describe highway), is encroached upon the —— side thereof, along the lands in the

occupation of L— M—, by a (describe obstruction); erected by the (present or a former) occupant of the same; and having ascertained the —— bounds and limits thereof to be upon and according to the following line, viz.: Beginning (describe the line of the highway) and having ascertained that all that narrow strip or piece of land which lies (under said obstruction, or all that strip of land under said obstruction and between said obstruction and the line of said highway), is a part of said highway: It is therefore ordered by said commissioner of highways that said (obstruction) be removed, so that the said highway shall be open and unobstructed, and of the width originally intended, which was —— rods.

Given under my hand, this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

[A copy of this order is to be served upon the party encroaching, with the following notice.]

To Mr. L—. M—.:

Take notice, That an order, a copy of which is herewith served upon you, has been made by me, and you are required according to the statute in such case made and provided, to remove the (obstruction) therein mentioned within thirty days after service upon you of a copy of said order.

Dated this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

No. 113.

Petition for Removal of a Dangerous Fence.

(Section 1608.)

To ————, Commissioner of Highways of the Township of ———— County of ————, Michigan:

We, the undersigned freeholders and residents of said township of ———, do hereby petition for the removal of a certain fence, located and described as follows, to-wit: .....

.....

the same not being a stone or hedge fence, for that the said fence is dangerous for the following reasons, to-wit: .....

.....

.....

.....

Dated this —— day of ——, A. D. 19—.

[This must be signed by at least twenty freeholders and residents of the township.]

No. 114.

Notice to Owner of Dangerous Fence.

(Section 1608.)

The petition of twenty freeholders and residents of the township of ——, county of ——, Michigan, having been presented to the undersigned, praying for the removal of the following described fence, to-wit: .....

.....

.....

the same not being a stone or hedge fence, for that the same is dangerous on account of its being .....

.....

.....

.....

You are therefore hereby notified to cause said fence to be removed within thirty days after service upon you of this notice, in default whereof said fence will be removed by the undersigned, in pursuance of law, and the expense of such removal will be assessed against the property whereon the said fence is located and will become and be a tax against the same.

Dated this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.
—— County, Mich.

No. 115.

Notice of Appeal From Order of Removal of Fence.

(Section 1608.)

To the Township Board of the Township of ——, County of ——, Mich.:

I, C— D—, of said township of ——, having been notified by the commissioner of highways of said township of —— to remove within thirty days a certain fence, located and described as follows: .....
.....
and
alleged to be dangerous because it .....
.....
.....
deeming myself aggrieved by the said order of removal, do hereby appeal to you from such order and pray that said order of said commissioner be dismissed, for the following reasons, to-wit:

Dated this —— day of ——, A. D. 19—.

.....

[To be served on the township clerk within 10 days from receipt of notice.]

No. 116.

Notice to Owner or Occupant of Application for Private Road.

(Section 1643.)

To Mr. R— S—:

Take notice, That application has been made to me, the undersigned commissioner of highways for the township of ——, by C— D—, to lay out a private road as follows: (here describe the road) being on the lands now owned and occupied by you, and that you are notified to meet me on the —— day of ——, A. D. 19—, at 10 o'clock in the forenoon, at the residence of E— F—, in said township, for the purpose of aiding in striking a jury to determine as to the necessity of such road and the damages resulting therefrom, in case such road shall be deemed necessary.

Dated this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

NOTE.—This notice must fix the time for meeting not more than ten nor less than five days from time of service of the notice.

No. 117.

Citation for Jury for Private Road.

(Section 1644.)

County of ——, Township of ——, ss.

You (here give names of persons selected as jury on private road) are hereby cited to appear before me, commissioner of highways of the township of —— aforesaid, at the residence of E— F—, in said township, on the —— day of ——, A. D. 19—, at 10 o'clock in the forenoon of said day, well and truly to examine and determine as to the necessity of laying out a private road running (here describe the road as in the application) being on the lands now owned and occupied by C— D—, and in case you shall decide such road to be necessary, to appraise the damages of the owner or occupant of said land by reason of laying out said road.

Dated this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

No. 118.

Certificate of Jury on Private Road.

(Section 1646.)

County of ——, Township of ——, ss:

We, the undersigned, a jury selected to determine as to the necessity of laying out a private road as hereinafter described, and to assess the damages therefor, having been duly cited to appear pursuant to a citation issued by A— B—, commissioner of highways of said township, met at the residence of C— D—, in said township, on the day of the date hereof, and having been duly sworn by said commissioner as required by law, and having viewed the premises, do hereby certify that we have determined that it is necessary that a private road should be laid out running as follows. (Here describe the road) being over the lands owned and occupied by C— D—, and that we appraise the damages to said C— D—, by reason of the laying out of said road over his land at the sum of —— dollars.

Given under our hands this —— day of ——, A. D. 19—.

(To be signed by jurors.)

No. 119.

Annual Account of Commissioner of Highways to the Township Board, in Township Which Has Approved Chapter XXV of the General Highway Law.

(Section 1813.)

To the Township Board of the Township of ——, County of ——:

The following is the annual account of the commissioner of highways of the township of ——, for the year ending on the first Monday of April in the year 19—:

The labor assessed in said township during the year ending on the first Monday of April, A. D. 19—, is —— days, and the amount of said labor actually performed is —— days, as appears by the returns made to me by the several overseers of highways of said township.

I have received for delinquencies and commutations, as provided by law, and from other sources, the sum of —— dollars, as follows, viz:

..... 19—. Received from J— R—, money received by him as overseer $.....
..... 19—. Received from S— L—, for obstructing highway ..... $.....
..... 19—. Received from J— S—, for commutation ..... $.....
..... 19—. Paid for repairs on bridge ..... $.....

(If money has been received from any other source, state it in a similar manner.)

The improvements which have been made on the roads and bridges in said township of ——, during the preceding year, are as follows: (State the improvements). The condition and situation of the roads and bridges in said township are as follows: (State the situation.)

I estimate that there should be assessed for highway labor, for the next ensuing year, one-tenth (or any proportion not exceeding one day) day's labor, upon each one hundred dollars' valuation of the taxable property of the township.

The following improvements, in my opinion, are necessary improvements to be made on the roads and bridges in said township of ——, viz: (State the improvements), and the expense of making such improvements, beyond what the labor to be assessed this year will accomplish, is estimated at the sum of —— dollars.

Given under my hand this —— day of ——, A. D. 19—.

.....

Commissioner of Highways of the Township of ——.

FORMS RELATING TO OVERSEERS OF HIGHWAYS.

No. 120.

Appointment of Overseer of Highways to Fill Vacancy.

(Sections 1437 and 1874.)

Whereas, a vacancy has occurred in the office of overseer of highways of road district number ——, in the township of ——:

Now, therefore, I do hereby appoint S— T—, a resident of said district, to the said office, to fill the said vacancy, and to hold the said office until the next annual township meeting, and until his successor is elected and qualified according to law.

Given under my hand this —— day of ——, A. D. 19—.

Commissioner of Highways.

No. 121.

Complaint to Fence Viewers of Neglect or Refusal to Repair or Rebuild Partition Fence.

(Section 1893.)

To B— O— and A— S—, Two of the Fence Viewers of the Township of ——:

The undersigned, A— B—, of said township, makes complaint and says that this complainant and C— D—, of the same township, are occupants of adjoining lands therein, and that a partition fence has been constructed on the line between said lands, which are enclosed by the occupants thereof respectively, and that of right the said C— D— ought to maintain that portion of said partition fence on said line described as follows, to-wit: —— (describing the same), that such portion of said fence has become decayed, broken down and out of repair, and ought to be rebuilt or repaired by the said C— D—, but that he, the said C— D—, hath neglected and still doth neglect to repair or rebuild the same, whereby this complainant is aggrieved, and he therefore prays that you, the said fence viewers, will proceed to examine and determine the same, after due notice to the said C— D—, as required by law.

Dated this —— day of ——, A. D. 19—.

A— B—.

No. 122.

Notice to Parties of Meeting of Fence Viewers to Determine Controversy.

(Section 1893.)

To A— B— and C— D—:

The said A— B—, having made complaint to the undersigned, two of the fence viewers of the township of ——, county of——, that the said C— D— has neglected and refused to rebuild or repair his proportion of the division fence between the lands occupied by you respectively, which he alleges to be out of repair, and having required us to view the same, and determine the matter of said complaint; now, therefore, you are hereby notified that we will meet for that purpose at the place where the said fence is situated, on the —— day of —— next (or, instant), at —— o'clock in the afternoon.

Dated this —— day of ——, A. D. 19—.

.....
.....
Fence Viewers.

No. 123.

Determination of Fence Viewers on Complaint.

(Section 1893.)

Whereas, Complaint has been made to the undersigned, two of the fence viewers of the township of ——, county of ——, by A— B—, of said township, setting forth that he, the said complainant, and C— D—, of the same township, are occupants of adjoining lands therein, and that a partition fence has been constructed on the line between said lands, which are inclosed by the occupants thereof respectively, and that of right the said C— D— ought to maintain that portion of said partition fence on said line described as follows, to-wit: ——, (describing it as in the complaint), and that such portion of said fence has become decayed, broken down and out of repair, and ought to be rebuilt or repaired by the said C— D—, but that the said C— D— hath neglected, and still doth neglect to repair or rebuild the same, whereby he, the said A— B—, is aggrieved, and praying that we, the said fence viewers, would proceed to examine and detemine the same, after due notice to the said C— D—, as required by law; and we having thereupon given notice to both of said parties that we would proceed to examine the same on the —— day of ——, A. D. 19—, at nine o'clock in the forenoon; and, whereas, on the day and year last aforesaid we were attended by the said A— B— and C— D—, (or, as the fact may be), and did proceed to examine that portion of the said partition fence hereinbefore described, and found the same to be decayed, broken down and out of repair; now, therefore, we do determine accordingly, and that the same ought to be rebuilt or repaired, and we do hereby direct the said C— D— to rebuild or repair the same within —— days from the date hereof.

In testimony whereof, we have hereto subscribed our names, this —— day of ——, A. D. 19—.

.....
.....
Fence Viewers.

No. 124.

Certificate of Value of Rebuilding or Repairing Partition Fence.

(Section 1894.)

We, the undersigned, two of the fence viewers of the township of ——, in the county of ——, having heretofore, on the complaint of A— B—, examined that portion of the partition fence between the lands occupied by the said A— B— and C— D—, respectively, in said township, and having determined the same to be out

of repair, and to require repairing or rebuilding, and having certified the same to the said C— D— on the —— day of ——, and directed him to repair or rebuild the same within —— days from that date; and he, the said C— D—, having neglected so to do, and the said A— B— having since the expiration of said last mentioned time rebuilt (or, repaired) the same, we do, upon inspection thereof, adjudge the said fence so rebuilt (or, repaired), as aforesaid, to be good and sufficient, and we hereby certify that we have ascertained the value of such rebuilding (or, repairing) by the said A— B—, to be the sum of —— dollars, and that the fees for our services in the premises amount to —— dollars.

Given under our hands this —— day of ——, A. D. 19—.

.....

.....

Fence Viewers.

No. 125.

Assignment by Fence Viewers of Shares of Division Fence, to Be Erected or Repaired by Occupants.

(Section 1895.)

A— B— and C— D—, being the occupants of certain adjoining lands in the township of ——, in the county of ——, and disagreeing concerning the respective portions of a division fence to be made (or, kept in repair) by them respectively, and we, the undersigned, two of the fence viewers of the said township, having been applied to by them for that purpose, (or, having been applied to by the said A— B— for that purpose, and having given due notice to the said A— B— and C— D— of our present meeting for the determination thereof), do hereby certify that we have examined the premises, and heard the allegations of the said parties, * and after due deliberation thereon have determined, and do hereby determine, that the said division fence be built as follows, to-wit: (insert description), and that one-half of said fence, on the east end of said division line is the proper portion thereof to be built (or, to be repaired and kept in repair) by the said A— B—, and that the remainder of said fence is the proper proportion thereof to be built (or, repaired and kept in repair) by the said C— D—. And we do hereby direct that each of the said parties build (or, repair), his proportion of said fence within —— months from this date. And we further certify that our fees for our services herein amount to the sum of —— dollars.

Given under our hands this —— day of ——, A. D. 19—.

.....

.....

Fence Viewers.

No. 126.

Appraisement of Fence When One Occupant Has Built More Than His Share.

(Section 1897.)

(As in No. 125 to the *, and then as follows:)

And it appearing to us that the said C— D— had, before any complaint made to us, voluntarily erected (or, become the proprietor of) the whole of the said division fence (or, more than his just share of said division fence), we do hereby certify that we have ascertained and determined the value of said division fence so built by said C— D—, over and above his just share thereof, to be the sum of —— dollars, which sum is to be paid by the said A— B— to him, the said C— D—, on account thereof.

Given under our hands this —— day of ——, A. D. 19—.

.....

.....

Fence Viewers.

No. 127.

Determination of Fence Viewers Where Land is Divided by Water.

(Section 1899.)

Whereas, A— B—, of the township of ——, in the county of ——, hath applied to the undersigned, two of the fence viewers of said township, to view the brook (or, river, or, pond, or, creek, as the case may be) which divides the land of the said A— B— from the land of the said C— D—, and determine whether the same answers the purpose of a sufficient fence, and if not, and if it should be impracticable, without unreasonable expense, to build a fence on the true boundary line between said parties, then to determine how, or on which side thereof such fence shall be set up and maintained, or whether partly on one side and partly on the other; and whereas, after due notice to the said A— B— and C— D—, we have, on this —— day of ——, A. D. 19—, proceeded to examine the premises, and have found and determined that the said brook (or, river, etc.) does not answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line between the lands of the said parties, we do therefore determine that the said division fence be built (state how, or on which side, or whether partly on one side and partly on the other, with sufficient particularity so that its location can be easily ascertained). And we do hereby certify that our fees for our services herein amount to —— dollars.

Given under our hands this —— day of ——, A. D. 19—.

.....

.....

Fence Viewers.

No. 128.

Determination of Value of One-Half of Partition Fence When Uninclosed Lands Have Been Inclosed.

(Section 1903.)

Whereas, A— B— and C— D—, being the owners of certain adjoining lands in the township of ——, in the county of ——, and the said A— B— having, on or about the —— day of ——, A. D. 19—, erected a division fence between the land belonging to him and that of the said C— D—, who allowed his own lands to lie open.

And, whereas, the said C— D— has recently inclosed the said land belonging to him; and a disagreement having arisen between the said parties as to the just proportion of the value of said division fence to be paid by the said C— D—, and we, the undersigned, two of the fence viewers of said township, having been applied to for that purpose; having made due inquiry into the facts and circumstances, and examined the premises, have determined, and do hereby determine that the following is a correct description of the fence built by the said A— B—, as aforesaid, to wit: (describe the fence); that the value of the said fence is the sum of —— dollars, and that the just proportion of the said value to be paid by the said C— D— to the said A— B—, is the sum of —— dollars. And we hereby certify that our fees for our services herein amount to —— dollars.

Given under our hands this —— day of ——, A. D. 19—.

.....

.....

Fence Viewers.

No. 129.

Agreement Between Owners of Adjoining Lands to Divide and Maintain a Partition Fence.

(Section 1906.)

This agreement, made this —— day of ——, A. D. 19—, between A— B—, of the township of ——, in the county of ——, and State of Michigan, of the one part, and C— D—, of the same township, of the other part, witnesseth, that whereas, the said A— B— has heretofore erected a fence on the division line between his lands and the lands of said C— D—, in said township, which said fence commences at (describe the line of fence), and whereas, after the erection of said fence, the said C— D— erected a fence on the east side of said division line, so that —— rods of said fence, commencing at, etc., (describe the portion of fence) has become and now is a partition fence between the respective fields of the said A— B— and C— D—, and whereas, the said C— D— has paid to said A— B— —— dollars, being in full for one-half of the value of said —— rods of fence, it is therefore agreed, in consideration of the premises between the said parties, that the —— rods of fence on the north part of said —— rods, being the north half thereof, shall be well and sufficiently maintained and kept in repair by the said A— B—, and the remainder of said —— rods shall be kept in like repair by the said C— D—.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

In presence of

E— F—.

A— B—, [SEAL.]

C— D—, [SEAL.]

FORMS RELATING TO JUSTICES OF THE PEACE.

No. 130.

Security to Be Given by Justice of the Peace.

(Sections 1916 and 1917.)

Whereas, The undersigned A— B— hath been elected to the office of justice of the peace in the township of ——, county of ——, State of Michigan, at the annual township meeting held therein, on the —— day of April, A. D. 19—.

Now, therefore, we, the said A— B—, as principal, and C— D— and E— F— as sureties, do hereby jointly and severally agree to pay to each and every person entitled thereto, all such sums of money as the said A— B— shall become liable to pay for or on account of any money which may come into his hands as a justice of the peace, upon demand thereof, made by such person, his agent or attorney.

Dated this —— day of ——, A. D. 19—.

(Signatures of Justice and Sureties.)

In presence of

....., Supervisor (or County Clerk).

[Justification of Sureties as in Form No. 15.]

I do hereby approve of the within (or foregoing) instrument.

Dated this —— day of ——, A. D. 19—.

(Signature of Supervisor or County Clerk.)

No. 131.

Precept to Summon a Jury of Inquest Upon a Dead Body.

(Section 1927.)

STATE OF MICHIGAN, County of ——, ss.

In the Name of the People of the State of Michigan:

To the Sheriff or any Constable of said County of ——:

You are hereby commanded to summon six good and lawful men of said county

to be and appear before me, one of the justices of the peace of the township of ——, in said county, at ——, in the township of ——, in the county aforesaid, on the —— day of ——, A. D. 19—, at —— o'clock in the ——noon, then and there to inquire of, do and execute all such things as on behalf of the said people shall then and there be lawfully given them in charge, touching the death of R— S— (or, a person unknown), and be you then and there to certify what you shall have done in pursuance hereof, and further to do and execute what, in behalf of the said people, shall be required of you.

Given under my hand this —— day of ——, A. D. 19—.

....., Justice of the Peace.

No. 132.

Subpoena for Witnesses to Attend Inquest.

(Section 1929.)

STATE OF MICHIGAN, County of ——, ss.

In the Name of the People of the State of Michigan:

To E— R—, G— F—, and O— S—:

You are hereby commanded to be and appear before me, the undersigned, one of the justices of the peace of the township of ——, in said county, at ——, on the —— day of ——, A. D. 19—, at —— o'clock in the ——noon, to testify on behalf of the said people upon an inquest then and there to be taken and held upon the body of C— D—, (or, upon the dead body of a person whose name is unknown), what you may know touching the cause of the death of the said person. Hereof fail not at your peril.

Given under my hand this —— day of ——, A. D. 19—.

....., Justice of the Peace.

No. 133.

Attachment Against a Witness for not Appearing.

(Section 1929.)

In the Name of the People of the State of Michigan:

To the Sheriff or any Constable of the County of ——:

You are hereby commanded to attach E— F—, and bring him before me, the undersigned, a justice of the peace of the township of ——, in said county, at ——, in said township, forthwith, to testify and give evidence in behalf of the said people upon an inquest then and there to be taken and held upon the dead body of C— D—, (or, upon the dead body of a person whose name is unknown), touching the death of said person; and also to answer all such matters as shall be objected against him, for that he, the said E— F—, having been duly subpœnaed to attend the said inquest, has refused (or, neglected) to attend the same in conformity to such subpœna; And have you then and there this writ.

Given under my hand this —— day of ——, A. D. 19—.

....., Justice of the Peace.

No. 134.

Examination of Witnesses.

(Section 1931.)

STATE OF MICHIGAN, County of ——, ss.

Testimony of witnesses produced, sworn and examined upon an inquest taken and held upon the dead body of C— D—, (or, of a person whose name is unknown), at the township of ——, in said county, on the —— day of ——, A. D. 19—, before the undersigned, one of the justices of the peace of said township, and E— F—, etc., (naming all the jurors sworn) good and lawful men of said county, duly sworn by me diligently to inquire in behalf of the people of this State, when, in what manner, and by what means the said deceased person came to his death.

B— O—, a witness produced, sworn and examined, upon his oath says, (here state his testimony as given, including his cross-examination, if any).

B— O—.

Taken, subscribed and sworn
before me, this —— day
of ——, A. D. 19—.

.....,
Justice of the Peace.

(If several witnesses are sworn, state their testimony in the same manner.)

I do hereby certify that the foregoing is a correct statement and account of an examination of witnesses taken by and before me and the jurors aforesaid, at the time and place aforesaid, and of the testimony of the several witnesses produced, sworn and examined, upon the inquest aforesaid.

Given under my hand this —— day of ——, A. D. 19—.

.....,
Justice of the Peace.

No. 135.

Warrant to Apprehend Person Charged by Inquest with Crime.

(Section 1935.)

STATE OF MICHIGAN, County of ——, ss.

In the Name of the People of the State of Michigan:

To the Sheriff or any Constable of said County:

Whereas, J— B— has been charged, upon an inquest taken before me, one of the justices of the peace of said county, by the oaths of (name the jurors), at the house of —— in the township of ——, in said county, on the —— day of ——, A. D. 19—, upon the view of the body of C— D—, then and there lying dead, with having, on the —— day of ——, A. D. 19—, at the said township of ——, in the county aforesaid, with force and arms, feloniously, and of his malice aforethought, killed and murdered the said C— D—;

You are therefore hereby commanded forthwith to take the said J— B— and bring him before me, at ——, in the township of ——, in said county, or before any other magistrate or court having cognizance of the case, to be dealt with according to law.

Given under my hand this —— day of ——, A. D. 19—.

.....,
Justice of the Peace.

No. 136.

Certificate of Justice that Deceased was a Stranger.

(Section 1936.)

I, the undersigned, one of the justices of the peace of the township of ——, in the county of ——, do hereby certify, that on the —— day of ——, A. D. 19—, I was called for the purpose of taking an inquest on the view of the dead body of a person then found lying at ——, in said township, and that on a view of the said body I deemed it unnecessary to take an inquest thereupon, (or, deeming it necessary that an inquest should be taken thereupon, I caused a jury of —— men to be summoned, impaneled and sworn for that purpose, a copy of which said inquisition is hereto annexed) and that I thereupon caused the said body to be decently buried, as by law I was required to do. And I further certify that the person upon whose dead body such inquest was taken was, to the best of my knowledge and belief, a stranger, not belonging to this State.

I further certify that the expense of the said burial, with my fees, and all the expenses of the said inquisition (if any was taken), were as follows: (here state each item of fees and expenses of the inquisition and burial, and add as follows:) all of which said expenses were necessarily incurred, and are in my judgment, reasonable and just in amount.

In witness whereof I have hereunto set my hand, this —— day of ——, A. D. 19—.

.....,
Justice of the Peace.

No. 137.

Complaint for Inquest After Burial.

(Section 1937.)

STATE OF MICHIGAN, County of ——, ss.

The complaint of E— R—, of the township of ——, in said county, made before ——, one of the justices of the peace of the township of ——, in said county, on this —— day of ——, A. D. 19—, who, being duly sworn, upon his oath says, that on or about the —— day of ——, A. D. 19—, one A— S— died in the said township, and was immediately (or, soon) thereafter buried in the burial ground owned by said township (or, as the fact may be) in the township aforesaid, and that he, the said E— R—, has good reason to believe, and does believe, that the said A— S— died of poison wrongfully administered to him by some person or persons to the said E— R— unknown, with intent to cause the death of him, the said A— S—. Wherefore he, the said E— R—, prays that the body of the said A— S— may be disinterred, and an inquest thereupon held, and an examination thereof made to ascertain the cause of his death, in pursuance of the statute in such case made and provided.

E— R—.

Subscribed and sworn to
before me, this —— day of
——, A. D. 19—.

.....,
Justice of the Peace.

No. 138.

Examination of Complainant and Witnesses on Complaint.

(Section 1937.)

STATE OF MICHIGAN, County of ——, ss.

The examination of E— R— and A— W—, taken on oath before ——, a justice of the peace of the township of ——, in said county, on the —— day of ——, A. D. 19—, on the complaint of the said E— R—, made in writing and on oath

before me, alleging that one A— S—, on or about the —— day of —— last, (or, instant) died at the township of ——, in said county, from poison wrongfully administered to him by some person or persons to him unknown, and was buried in ——, in said township, that is to say, the said E— R—, on his oath aforesaid, says, etc., (set forth the testimony of the complainant and of the witness or witnesses respectively, and let the same be signed and certified like other depositions.)

No. 139.

Process for Disinterment and Removal of Body.

(Section 1937.)

STATE OF MICHIGAN, County of ——, ss.

In the Name of the People of the State of Michigan:

To the Sheriff of said County:

Whereas, E— R— has this day made complaint in writing and on oath before me, ——, one of the justices of the peace of the township of ——, in said county, alleging that one A— S— died in said township of ——, on or about the —— day of ——, A. D. 19—, and was immediately (or, soon) thereafter buried in ——, in said township, and that he, the said E— R—, had good reason to believe, and did believe that the said A— S— died of poison wrongfully administered to him, with intent to cause his death, by some person or persons to the said E— R— unknown; and whereas, on examination of the said E— R— and of A— W—, a witness produced by him, taken on oath and in writing by and before me, the said justice, I am satisfied therefrom that there is just cause to believe that the said A— S— came to his death by means of poison wrongfully administered to him by some person or persons unknown, and that a post mortem examination of the body of the said A— S—, deceased, will materially aid in the prosecution of any person who may be charged with administering the poison which caused the death of the said A— S—;

You are therefore hereby commanded forthwith to proceed with your under sheriff, or one of your deputies, to the place where such deceased person lies buried, and to disinter and remove the body of said deceased person to some suitable and convenient place within the said township of ——, where the said body was buried, for the purpose of holding an inquest over the same; and when you have so done, you are required to give immediate notice to me of the place where you shall have the said body.

Given under my hand this —— day of ——, A. D. 19—.

.....,
Justice of the Peace.

No. 140.

Petition for Jury to Assess Damages Caused by Laying Out, Altering or Discontinuing State or Territorial Road.

(Section 1960.)

To ——, Justice of the Peace in and for the Township of ——, County of ——, Michigan:

I, ——, of said township, feeling myself aggrieved by the action of the board of supervisors of the county aforesaid, in laying out (or, altering, or, discontinuing) a certain state road, which crosses (or, when established will cross) lands owned by me and is described as follows: (here describe road) ——, hereby respectfully represent that by reason of the laying out (or, altering, or, discontinuing) of said road I have been (or, am likely to be) damaged, wherefore I petition you, the said justice of the peace, to issue a venire summoning a jury of twelve freeholders of

said township, to determine the necessity of laying out (or, altering, or, discontinuing) said highway and the taking of private property therefor, and to assess the amount of damages I have sustained (or, am likely to sustain) from the action of such board as aforesaid.

Dated this —— day of ——, A. D. 19—.

(Signature of Petitioner.)

No. 141.

Notice by Justice to Petitioner of Time and Place of Hearing.

(Section 1961.)

To J— D—, of the Township of ——, County of ——, Michigan:

You are hereby notified that your petition, filed with me this day, for a jury to determine the necessity for the action of the board of supervisors of said county, in laying out (or, altering, or, discontinuing) a certain state road in said township, across lands owned by you, and to assess the amount of damages you have sustained, (or, are likely to sustain) thereby, will be heard before me, at ——, in said township, on the —— day of ——, A. D. 19—, at —— o'clock in the —— noon of said day.

Dated this —— day of ——, A. D. 19—.

.....,

Justice of the Peace in and for the Township of ——.

[This form may be used, with slight change, for notice to supervisor, required by the same section.]

No. 142.

Determination of Jury on Hearing of Petition.

(Section 1962.)

STATE OF MICHIGAN, County of ——, ss.

Before L— W—, a justice of the peace in and for the township of ——, in said county.

In the matter of the petition of J— D—, of said township, for a jury to determine the necessity of the action of the board of supervisors of said county, in laying out a certain state road in said township and the taking of private property therefor, and to assess the damages sustained (or, likely to be sustained), by said petitioner in consequence therefor.

We, the undersigned, having been selected as a jury and summoned pursuant to a venire issued by L— W—, a justice of the peace in and for said township, to determine the necessity of the action of the board of supervisors of said county, in laying out a state road in said township, across lands owned by the petitioner aforesaid, and further described as follows, to wit: (here describe road as in petition) and to determine the necessity for taking private property therefor, and to assess the amount of damages sustained (or, likely to be sustained) by said petitioner in consequence thereof, on hearing and considering all the evidence both for and against the allowance of damages and the necessity for the taking of said lands for said road, do hereby certify to you, the justice of the peace aforesaid, our determination that the action of said board of supervisors as aforesaid, was necessary, that there is a necessity for the taking of said lands for the purpose of said state road and that by reason thereof, J— D—, the said petitioner has sustained (or, is likely to sustain) damages to the amount of —— dollars, and that he, the said J— D—, is entitled to said amount as a just compensation therefor.

Dated this —— day of ——, A. D. 19—.

.....

.....

etc., etc.,

Jurors.

No. 143.

Bond to be Filed at Time of Filing Petition.

(Section 1962.)

Know all men by these presents, That we, J— D—, as principal, and J— A. C— and H— T—, as sureties, all of the county of ——, Michigan, are held and firmly bound unto the People of the State of Michigan, in the penal sum of fifty dollars, lawful money, for the payment of which sum, well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this —— day of ——, A. D. 19—.

Whereas, The above bounden, J— D—, considers himself aggrieved by the action of the board of supervisors of the county of ——, in laying out a certain state road in the township of ——, in said county, across lands owned by him, and

Whereas, He, the said J— D—, has petitioned L— W—, a justice of the peace in and for said township of ——, to issue a venire for a jury to determine the necessity for the action of such board as aforesaid and for taking private property for the purpose of said road, and to assess the amount of damages sustained or likely to be sustained by the said J— D—, in consequence thereof.

Now, therefore, the condition of this obligation is such, that if, on the hearing of said petition, the said jury shall not award to the said J— D— any damages as prayed for in said petition, he, the said J— D—, will pay all costs of the justice, officer and jury in such proceedings, then the above obligation to be void, otherwise to be and remain in full force and virtue.

..... [L. S.]
..... [L. S.]
..... [L. S.]

Signed, sealed and delivered in presence of
.....

No. 144.

Notice to Owner of Unclaimed Property to Claim the Same and Pay Charges.

(Section 1966.)

To the Owner or Owners of the Personal Property Hereinafter Described:

You are hereby notified, that the following described personal property, that is to say: (describing the articles or packages) having been consigned to (or, deposited with) me, a warehouse keeper (or, as the case may be), and received by me on the —— day of ——, A. D. 19—, and I having immediately caused a description thereof to be entered in a book, by me kept for that purpose, with the date of the reception thereof, and said property not having been left with me to be forwarded or otherwise disposed of according to directions received by me, at or before the time of the reception thereof, and the name and residence of the owner thereof being known (or, ascertained), and I having immediately notified such owner by letter to him directed, and deposited in a postoffice to be transmitted to him by mail, of the reception of such property (or, if such owner be not known or ascertained, state the fact accordingly), and the said property having remained in my possession unclaimed for three months after its reception as aforesaid; now, therefore, notice is hereby given, that unless such property shall be claimed within three months from the first publication of this notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided.

Dated this —— day of ——, A. D. 19—.

R— W—.

No. 145.

Affidavit on Application to Justice for Order to Sell Unclaimed Property.

(Section 1967.)

STATE OF MICHIGAN, County of ——, ss.

R— W—, being duly sworn, deposes and says, that on the —— day of ——, A. D. 19—, the following described personal property, that is to say: (describing it), was consigned to (or, deposited with) this deponent, and received by him as a warehouse keeper (or(wharf keeper, or as the fact may be); that this deponent, immediately upon the reception thereof, caused a description of such property, with the date of the reception thereof, to be entered in a book kept by him for that purpose; that such property was not left with this deponent for the purpose of being forwarded, or otherwise disposed of according to directions received by him at or before the time of the reception thereof; that he, this deponent, knew (or, ascertained) that said property was owned by A— T—, of ——, and that he immediately notified the said A— T—, by letter directed to him at his said place of residence, and deposited in the postoffice at ——, of the reception of the said property, a copy of which said notice is hereto attached, and marked "A" (or, if the owner was not known or ascertained, state the fact accordingly); that said property having remained in his possession unclaimed for three months after its reception, he did thereupon, to wit: On the —— day of ——, A. D. 19—, cause a notice to be published in the (state the name of the paper), a newspaper published in the said county of ——, a copy of which said last mentioned notice is hereto attached, marked "B," and which said notice was continued in said newspaper, and published therein once in each week for four successive weeks; that more than three months have elapsed since the first publication of the said last mentioned notice, and that neither the owner, nor any person entitled to such property, has claimed the same, or paid or offered to pay the legal charges thereon, including the expense of said publication. (If such owner be still unknown or ascertained since the reception of the property, state the fact.)

R— W—.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

.....

Justice of the Peace.

No. 146.

Order of Sale to be Annexed to Inventory of Unclaimed Property.

(Section 1968.)

To any Constable of the Township of ——:

Whereas, R— W—, of the said township, has made and delivered to the undersigned, one of the justices of the peace of said township, an affidavit setting forth, (here set forth the substance of the affidavit as in the preceding form), whereupon, at the request of the said R— W—, I have caused the property mentioned in said affidavit to be opened and examined in my presence, and an inventory thereof to be made, which inventory is hereto annexed; now, therefore, in pursuance of the statute in such case made and provided, you are hereby ordered and directed to sell the said property at public auction for the highest price you can obtain therefor, first giving ten days' notice of such sale by posting up written notices thereof in three public places in said township; and upon completing such sale you are required to endorse upon this order a return of your proceedings under the same, and to deliver the same to me, together with the inventory aforesaid, and the proceeds of such sale, after deducting your fees for making the said sale.

Given under my hand this —— day of ——, A. D. 19—.

.....

Justice of the Peace.

No. 147.

Justice's Statement of Fees and Charges on Sale of Unclaimed Property.

(Section 1969.)

In the matter of the sale of unclaimed property under an order made on the application of R— W—, a warehouse man.

I, the undersigned justice of the peace who made the order of sale above referred to, do hereby certify that I have, in a summary manner, ascertained and determined the amount of charges and expenses legally incurred in regard to the property described in the inventory annexed to said order, and find the same to be as follows: (state each item of such charges and expenses, including one dollar for each day's services rendered by the justice).

Given unto my hand this —— day of ——, A. D. 19—.

.....
Justice of the Peace.

No. 148.

Appraisal by Justice of Stray Animals or Lost Goods.

(Section 1970.)

Whereas, Application has been made to the undersigned, one of the justices of the peace of the township of ——, in the county of ——, by A— B—, of the said township to appraise certain stray animals (or, lost goods) described as follows, that is to say: (describe the animals or goods) and I, having examined the same, and estimated the value thereof, do hereby certify that I have appraised the same as follows: (state the appraised value of the several animals, or articles of property as estimated). And I do further certify that my fees for services herein amount to the sum of —— dollars.

Given unto my hand this —— day of ——, A. D. 19—.

.....
Justice of the Peace.

No. 149.

Certificate of Amount of Damage Done by a Dog or Dogs to Sheep or Lambs.

(Section 1974.)

I, the undersigned, one of the justices of the peace of the township of ——, county of ——, do hereby certify, that upon the application of A— B—, of said township, the owner of sheep (or, lambs) alleged to have been killed (or, wounded by a dog or dogs, I did, on the —— day of ——, A. D. 19—, proceed to inquire into the matter, and to view the sheep (or, lambs) killed (or, wounded) and that I am satisfied that —— sheep (or, lambs) belonging to the said A— B— were killed (or, wounded) by a dog or dogs, and in no other manner, and that the damage sustained by the said A— B— by reason of the killing (or, wounding) of the said sheep (or, lambs) as aforesaid, is —— dollars. And I further certify that I am not interested in the matter aforesaid, and am not of kin to the said A— B—, and that I am not a member of the township board of said township, and that my fees for performing said duty amount to —— dollars.

Given unto my hand this —— day of ——, A. D. 19—.

.....
Justice of the Peace.

No. 150.

Appointment by Justice of Persons to Appraise Damages Done by Beasts.

(Section 1978.)

Whereas, C— D—, of the township of ——, in the county of ——, being dissatisfied with the claim made by A— B—, for damages done by certain beasts owned (or, kept) by him, the said C— D—, to wit: (describing them), and which said beasts have been impounded therefor by the said A— B—, hath applied to me, one of the justices of the peace of said township, to appoint two disinterested and discreet persons to appraise the said damages; now, therefore, I do hereby appoint I— M— and O— P—, of the said township, to make the said appraisal, and to ascertain and determine the sum justly due from the said C— D—, to the said A— B—, for the damages, costs and expenses of the said A— B—, for which the said beasts have been impounded, including a reasonable compensation for their own services in the premises.

In testimony whereof, I have hereto set my hand, this —— day of ——, 19—.

.....
Justice of the Peace.

No. 151.

Oath to be Administered to Appraisers.

(Section 1978.)

You do solemnly swear that you will well and truly appraise, ascertain and determine the damages done to A— B—, by certain beasts owned (or kept) by C— D—, to wit: (describing them), and for which the said beasts have been impounded by the said A— B—, including the reasonable costs and charges of him, the said A— B—, and a reasonable compensation for your own services in the premises.

No. 152.

Determination by Appraisers of Amount of Damages.

(Section 1978.)

We, the undersigned, having been appointed by G— S—, one of the justices of the peace of the township of ——, in the county of ——, on the application of C— D—, of said township, to ascertain and determine the sum justly due from the said C— D—, to A— B—, for the damages, costs and charges of the said A— B—, for which certain beasts of the said C— D—, to wit: (describing them), were impounded and detained by the said A— B—, including a reasonable compensation for our services in the premises, and having been duly sworn, by the said justice, well and truly to perform the said duty, do hereby certify that we have carefully inquired into the facts and circumstances, and have ascertained and determined, and do hereby determine that the said C— D— is liable to the said A— B—, for the damages, costs and charges of the said A— B—, and for which the said beasts were impounded and detained by the said A— B—, in the sum of —— dollars; and that the sum of —— dollars is a reasonable compensation for our services herein.

Given under our hands this —— day of ——, A. D. 19—.

L— M—,
O— P—.
Appraisers.

No. 153.

Certificate of Officer Taking Testimony by Deposition.

(Section 1981.)

I, ——, a justice of the peace for the county of ——, in the state of ——, do hereby certify on the —— day of ——, 19—, at ——, o'clock in the —— noon, at my office in the —— of ——, in the state of ——, I did take the deposition of ——, the witness named in the annexed notice (or stipulation). Upon the taking of such deposition I was attended by —— in person and by —— as attorney for ——. The witness was by me first sworn to tell the truth, the whole truth and nothing but the truth in said cause, and was then examined by —— and cross-examined by —— for ——.

The questions as put and the answers as given were correctly written down by me (or, under my direction, or, were taken stenographically and transcribed under my direction), were then read over to the witness and pronounced correct and were then signed by the witness. I do further certify that the annexed writings, marked respectively Exhibits A, B and C, were the writings used by the witness and referred to in his deposition. And further that I am not interested in the event of said cause nor attorney or of counsel for either party.

Witness my hand and seal this —— day of ——, 19—.

.....
Justice of the Peace.

The amount of my fees is:

For taking, sealing, certifying and returning deposition..... $———
For writing —— words contained in said deposition..... ———
Total fees ..... ———

NOTE.—If the deposition is taken upon written interrogatories the above form should be modified accordingly.

No. 154.

Affidavit for a Commission to Take Testimony.

(Section 1982.)

A— B—
v.
C— D—

In justice's court. Before ——, one of the justices of the peace in and for the county of ——.

County of ——, ss: A— B—, being first duly sworn, deposes and says that N— O— is a material witness for this plaintiff on the trial of this cause. That said witness resides at —— in the state of ——, and more than fifty miles from ——, the place of trial of this cause.

And further, deponent says that T— B—, of ——, in this State, is a person without interest in this cause, and is not attorney or counsel for either party hereto, and is a suitable person to take the testimony of said witness by commission.

A— B—.

Subscribed and sworn to before me, this —— day of ——, 19—.

.....
Justice of the Peace.

No. 155.

Commission to Take Testimony.

(Section 1982.)

A— B—
v.
C— D—

In justice's court. Before ——, one of the justices of the peace in and for the county of ——.

To T— B—: Pursuant to the provisions of Chapter XVII of the Judicature Act of 1915, and for the reasons set forth in the annexed affidavit, you are hereby commis-

sioned and empowered to take the deposition de bene esse of N— O—, a witness for the plaintiff herein, at —— in the —— of —— in this State, beginning at —— o'clock in the —— noon of the —— day of ——, 19—. In taking such deposition and making return thereof you will follow the procedure as pointed out in section nine of said chapter, a copy of which is printed on this commission. (Sec. 1983). You will put such interrogatories to said witness as are attached hereto and as may be furnished by the parties hereto.

Dated this —— day of ——, A. D. 19—.

.....
Justice of the Peace.

FORMS RELATING TO CONSTABLES.

No. 156.

Security to be Given by Constable.

(Section 2015.)

Whereas, The undersigned, A— B—, hath been elected to the office of constable in the township of ——, at the annual township meeting held therein, on the —— day of ——, A. D. 19—;

Now, therefore, we, the said A— B—, as principal, and C —D— and E— F—, as sureties, do hereby jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as he, the said A— B—, may become liable to pay on account of any neglect or default of the said A— B—, as such constable, in the service or return of any process that may be delivered to him for service or collection, or on account of any misfeasance of said constable in the discharge of or failure of said constable to faithfully perform any of the duties of his said office.

Dated this —— day of ——, A. D. 19—.

(Signatures of constable and sureties.)

In presence of

.....

[Affidavit of sureties as in Form No. 15.]

I do hereby approve of the within (or, foregoing) instrument and of the sureties therein named.

Dated this —— day of ——, A. D. 19—.

(Signature of supervisor or township clerk.)

No. 157.

Return of a Summons Personally Served.

(Sections 2028 and 2039.)

I hereby certify and return, that on the —— day of ——, A. D. 19—, at ——, in the county of ——, I served the within summons personally on the defendant therein named, by delivering to him a true copy thereof.

Amount of my fees, $——.

Dated ——, 19—. .....
Constable.

No. 158.

Return of Summons Served by Copy.

(Sections 2028 and 2039.)

I hereby certify and return, that on the —— day of ——, A. D. 19—, at ——, in the county of ——, I served the within summons by leaving a true copy thereof, attested by me, at the last place of abode of the defendant, in the presence of the wife of the said defendant (or, of his son, or, daughter, being of suitable age and discretion) who was by me informed of its contents.

Amount of my fees, $——.

.....
Constable.

No. 159.

Return of Summons Against Several Persons.

(Sections 2028 and 2039.)

I hereby certify and return, that on the —— day of ——, A. D. 19—, at —— , in the county of ——, I served the within summons personally on C— D—, one of the defendants therein named, by delivering to him a true copy thereof; and that on the same day I served the same on the defendant E— F—, in said county, by leaving a true copy thereof, attested by me, at his last place of abode, in the presence of his wife (or, as the fact may be) who was by me then and there informed of its contents; and that G— H—, the other defendant named therein, could not be found within this county.

Amount of my fees, $——.

Dated ——, 19—.

.....
Constable.

No. 160.

Return of Summons Against a Corporation.

(Sections 2028, 2030 and 2039.)

I hereby certify and return, that on the —— day of ——, A. D. 19—, I served the within summons by delivering a true copy thereof, attested by me, to G— V—, who is the secretary of the K. S. & L. company, the defendant named therein (or, as the case may be), at ——, in this county of ——.

Amount of my fees, $——.

Dated ——, 19—.

.....
Constable.

No. 161.

Return to Warrant in Civil Case.

(Sections 2033 and 2039.)

I hereby certify and return, that by virtue of the within warrant I have arrested the within named defendant, and have him here in court as within I am commanded. I further certify and return that I notified the plaintiff on the —— day of ——, A. D. 19—.

Amount of my fees, $——.

Dated ——, 19—.

.....
Constable.

No. 162.

Return to Civil Warrant When Justice is Absent or Unable to Attend.

(Sections 2033 and 2039.)

I hereby certify and return, that by virtue of the within warrant, I have this day, in the county of ——, arrested the within named defendant; and I further certify and return that E— B—, the justice of the peace of the township of ——, who issued said warrant, is absent from said township (or, is sick and unable to hear or try the within mentioned cause), therefore, I have the said defendant in custody before H— R—, another justice of said township, as by law I am required. I further certify and return that I notified the plaintiff on the —— day of ——, A. D. 19—.

Amount of my fees, $——.

Dated ——, 19—. .....

Constable.

No. 163.

Notice to Plaintiff of Arrest of Defendant.

(Sections 2033 and 2039.)

To N— R—:

You are hereby notified that I have this day arrested C— D—, the defendant named in the warrant issued by J— H—, a justice of the peace of the county of ——, wherein you are named as plaintiff, and now have the said C— D— in my custody.

Dated ——, 19—. .....

Constable.

No. 164.

Bond of Indemnity to Constable in Attachment Cases.

(Section 2040—Note.)

Know all men by these presents, That we, H— O—, as principal, and E— F— and G— A—, as sureties, are held and firmly bound unto A— B—, a constable of the township of ——, in the county of ——, in the sum of —— dollars, lawful money, to be paid to the said A— B—, or to his certain attorney, executor, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this —— day of ——, A. D. 19—.

Whereas, The above bounden H— O—, has caused a certain writ of attachment to be issued by L— M—, a justice of the peace of the township of ——, in the said county of —— bearing date the —— day of ——, A. D. 19—, against the goods and chattels of C— D—, the defendant therein named, which said writ has been delivered to the said A— B—, as such constable as aforesaid, to be served and executed;

And, whereas, Certain goods and chattels that appear to belong to the said C— D—, are claimed by O— P—, to wit: (here describe the property proposed to be seized under the attachment) and the said A— B—, has required to be indemnified before seizing the same by virtue of said writ; now, therefore, the condition of this obligation is such, that if the said H— O— shall well and truly save, keep and bear harmless, and indemnify the said A— B—, and all and every person and persons aiding and assisting in the premises, of and from all harm, let, trouble, damages, costs, suits, actions, judgments and executions that shall or may at any time arise, come, or be brought against him, them, or any of them, as well for seizing and detaining the said goods and chattels under and by virtue of said writ

of attachment, as of all or any goods and chattels which he or they may judge to belong to the said C— D—, and also for entering any shop, store, building or other premises for the taking of any such goods and chattels, then this obligation to be void; otherwise to remain in full force and virtue.

H— I—, [L. S.]
D— F—, [L. S.]
G— A—, [L. S.]

Signed, sealed and delivered in the presence of
.....

No. 165.

Bond to Prevent Removal of Property Seized Under an Attachment.

(Section 2043.)

Know all men by these presents, That we, C— D—, as principal, and E— F— and J— H—, as sureties, are held and firmly bound unto A— B— (the name of the constable) in the sum of —— dollars, to be paid to the said A— B—, or to his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this —— day of ——, A. D. 19—.

The condition of this obligation is such, that whereas, the said A— B—, a constable of the township of ——, in the county of ——, has seized and taken certain goods and chattels, to wit: (enumerate the articles seized), by virtue of a writ of attachment issued by I— M—, a justice of the peace of the township of ——, in said county, in favor of H— O—, against the above bounden C— D—, and whereas, the above named obligors desire to prevent the removal of the said goods and chattels; now, therefore, if the said goods and chattels shall be produced to satisfy any execution that may be issued upon any judgment that shall be recovered by the plaintiff upon such attachment, then this obligation is to be void, otherwise of force.

C— D—, [SEAL.]
E— F—, [SEAL.]

I approve of E— F— and J— H— as sureties in the within (or, foregoing) bond.

.....
Constable.

No. 166.

Bond by Claimant of Property Attached.

(Section 2044.)

Know all men by these presents, That we, R— S—, as principal, and E— F— and G— H—, as sureties, are held and firmly bound unto H— O—, (the plaintiff) in the sum of —— dollars, to be paid to the said H— O—, or to his certain attorney, executors, administrators or assigns; to the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this —— day of ——, A. D. 19—.

The condition of this obligation is such, that whereas, certain goods and chattels, to wit: (enumerate the articles seized) were, on the —— day of ——, A. D. 19—, seized and taken by A— B—, a constable of the township of ——, in the county of ——, by virtue of a writ of attachment issued by L— M—, a justice of the peace of said county, in favor of the said H— O—, against C— D—, and whereas the above bounden R— S— claims the said goods and chattels as his property;

Now, therefore, if the said R— S—, in a suit to be brought on this obligation within three months from the date hereof, shall establish that he was the owner of the said goods and chattels at the time of said seizure, and in case of his failure to do so, if the said R— S— shall thereupon pay the value of the said goods and chat-

tels, with interest, to the said plaintiff, then this obligation is to be void, otherwise of force.

R— S—, [SEAL.]
E— F—, [SEAL.]
G— H—, [SEAL.]

I approve of E— F— and G— H— as sureties in the within (or, foregoing) bond.
Dated ——, 19—.

.....
Constable.

No. 167.

Inventory of Property Seized on Attachment.

(Section 2047.)

Inventory of property this day seized by me by virtue of the annexed (or, within) writ of attachment:
One lumber wagon.
One double harness, etc.
Dated this —— day of ——, A. D. 19—.

.....
Constable.

No. 168.

Return of Attachment Personally Served.

(Sections 2039, 2040 and 2047.)

By virtue of the within attachment, I did, on the —— day of ——, A. D. 19—, seize and take the goods and chattels of the defendant mentioned in the inventory of which the annexed is a copy, and on the same day I served upon the defendant, personally, a copy of the said attachment, and of the said inventory, certified by me.
Fees, $——.
Dated ——, 19—.

.....
Constable.

No. 169.

Return of Attachment When Bond Has Been Given.

(Sections, 2039, 2040 and 2047.)

By virtue of the within attachment, I did, on the —— day of ——, 19—, at ——, in the county of ——, seize and take the goods and chattels mentioned in the inventory of which the annexed is a copy, and on the same day I served upon the defendant, personally, a copy of the said attachment, and of the said inventory, and the said goods and chattels were by me delivered up to C— D—, the defendant, (or, R— S—, the claimant thereof) upon receiving the bond herewith returned.
Fees, $——.
Dated ——, 19—.

.....
Constable.

No. 170.

Return of Attachment When Defendant not Found.

(Sections 2039 and 2040.)

By virtue of the within writ of attachment, I, on the —— day of ——, 19—, at ——, in the county of ——, seized the goods and chattels of the defendant C— D—, within named, which are mentioned in the inventory of which the annexed is a copy, and I hereby certify that I have made diligent search and inquiry, and am unable to find the said C— D— within said county; and therefore, on the —— day of ——, 19—, because the said defendant could not be found, I left a copy of the within attachment and of the said inventory, duly certified by me, at the last place of residence of said defendant in said county of ——, with E— F—, a person of suitable age and discretion (or, as the case may be: Also, if the property is released upon bond being given, state that fact).

Amount of my fees, $——.

Dated ——, 19—. .....

Constable.

No. 171.

Return to Writ of Replevin, Goods Replevied, and Defendant Summoned.

(Sections 2039 and 2053.)

I hereby certify and return, that by virtue of the within writ, I have this day replevied and delivered to the within named plaintiff, the goods and chattels therein specified, as I am within commanded; and I have also this day summoned the within named defendant to appear according to the exigency of said writ, by delivering to him personally a certified copy of said writ, (or, by leaving a copy of said writ, certified by me, at the usual place of abode of said defendant, with T— R—, a person of suitable age and discretion, the said defendant not being found).

Amount of my fees, $——.

Dated ——, 19—. .....,

Constable.

No. 172.

Return of a Subpoena Personally Served.

(Sections 2039 and 2076.)

I hereby certify and return, that on the —— day of ——, A. D. 19—, I served the within subpœna personally upon the within named A— L— and C— S—, in the township (or, city, or, village), of ——, in the county of ——, by reading the same to each of them (or, by stating the contents thereof to each of them), and that I at the same time paid each of them the sum of —— for his fees for attendance before the justice within named, and for —— miles' travel. (If the fees are tendered and refused, state according to the fact.)

Dated this —— day of ——, A. D. 19—.

.....,

Constable.

No. 173.

Return of a Subpoena, Witness not Found.

(Sections 2039 and 2076.)

I hereby certify and return that I have made diligent search for the within named B— G—, and that he could not be found to be served with the within subpoena.
Dated this —— day of ——, A. D. 19—.

....,
Constable.

No. 174.

Bonds of Indemnity for Taking Goods on Execution.

(Section 2059.)

(As in Form No. 164, to and including the date, and then as follows:)
Whereas, The said A— B—, (the constable) as constable as aforesaid, is about to seize and levy upon certain goods and chattels, to wit: (describe the property) by virtue of an execution issued upon a judgment in favor of the said H— O—, against C— D—, by M— L—, a justice of the peace of the township of ——, in the county of ——, with intent to sell the same, which said property is alleged by the said H— O— to be the property of the said C— D—; and whereas, the said A— B— requires to be indemnified in the premises;
Now, therefore, the condition of this obligation is such, that if the said H— O— shall at all times keep the said A— B— harmless and indemnified from and against all damages, costs, charges, trouble and expense, of what nature soever, which he may be put to, sustain or suffer by reason of such levy and seizure, or of the subsequent proceedings thereon, then this obligation is to be void, otherwise of force.
(Signatures and seals.)

No. 175.

Inventory When Exempt Property is Levied On.

(Section 2061.)

Inventory of property exempt by law from execution to a specified amount or value, levied upon by the undersigned, a constable of the township of ——, in the county of ——, by virtue of an execution issued by I— M—, a justice of the peace of said county, in favor of H— O—, plaintiff, against C— D—, defendant, made this —— day of ——, A. D. 19—, to wit: (describe the property).

....
Constable.

No. 176.

Oath of Appraisers to Be Indorsed on Inventory.

(Section 2061.)

STATE OF MICHIGAN, County of ——, ss.
E— H— and J— D—, two disinterested freeholders of the township of ——, in said county, being sworn, say, and each for himself doth say, that he will well and

truly appraise the property mentioned in the within (or, foregoing) inventory at its cash value, according to the best of his understanding.

E— H—,
J— D—.

Subscribed and sworn to before me this —— day of ——, A. D. 19—.

.....
Constable.

No. 177.

Appraisal to be Indorsed on Inventory.

(Section 2061.)

We, the undersigned, disinterested freeholders of the township of ——, in the county of ——, having been duly sworn by the constable above named, well and truly to appraise the property specified in the within (or, foregoing) inventory, said property now being in the said township of ——, at its cash value, according to the best of our understanding, and having viewed the said property, do appraise the same as follows: (specify each article and its value).

Witness our hands, this —— day of ——, A. D. 19—.

.....
.....
Appraisers.

No. 178.

Indorsement of Levy on Execution.

(Section 2062.)

I have levied the within execution on (describe the property) the property of C— D—, the within named defendant, this —— day of ——, A. D. 19—.

.....,
Constable.

No. 179.

Notice of Constable's Sale on Execution.

(Section 2062.)

By virtue of an execution, issued by L— M—, a justice of the peace of the township of ——, in the county of ——, in favor of H— O—, against C— D—, bearing date the —— day of ——, A. D. 19—, I have seized and taken (describe the property) the property of said C— D—, which I shall sell at public auction to the highest bidder, at ——, in the township of ——, in the county of ——, on the —— day of ——, A. D. 19—, at —— o'clock in the —— noon.

Dated this —— day of ——, A. D. 19—.

.....,
Constable.

No. 180.

Return of Execution Satisfied.

(Section 2064.)

By virtue of the within execution I have levied and collected the damages, interest and costs mentioned therein, as I am within commanded.
Dated at ——, this —— day of ——, A. D. 19—.

....., Constable.

No. 181.

Return of Execution Wholly Unsatisfied.

(Section 2064.)

I can find no goods or chattels of the within named defendant whereon to levy for the damages, interest and costs within mentioned, or any part thereof.
Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 182.

Return of Execution When Part Has Been Collected.

(Section 2064.)

By virtue of the within execution I have levied and collected —— dollars, part of the damages and costs within mentioned, and I can find no goods or chattels of the within named defendant whereon to levy the residue or any part thereof.
Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 183.

Return of Execution With Schedule of Goods Unsold.

(Section 2965.)

By virtue of the within execution, I did on the —— day of ——, instant (or last) levy upon and seize the goods and chattels in the annexed schedule described, which I have in my custody, not having been able to find any goods or chattels of the defendant on which to levy at an earlier day, and there not being sufficient time after the said levy to advertise and sell the said goods and chattels before the return day of said execution.
Dated this —— day of ——, A. D. 19—.

....., Constable.

Schedule of property referred to in my return to the annexed execution.

[Enumerate the articles levied upon and sign the same officially.]

No. 184.

Return of Execution Against the Body, Defendant Taken.

(Section 2069.)

I could find no goods or chattels of the defendant, whereof I could levy the within execution, and for want thereof I have taken his body and committed him to the common jail of the county, as I am within commanded.

Dated this —— day of ——, A. D. 19—.

....., Constable.

If a part be collected, and the body taken for the residue, the return will be according to the fact.

No. 185.

Return of Execution Against the Body, Defendant not Found.

(Section 2069.)

I could find no goods or chattels of the defendant, whereof I could levy the within execution, and the body of said defendant could not be found.

Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 186.

Return in Case of Set-off of Executions.

(Section 2073.)

I hereby certify and return, that after the delivery to me of the within (or, annexed) execution, C— D—, the defendant therein named, delivered to me an execution in his favor against H— O—, the within named plaintiff, issued by H— R—, a justice of the peace of the township of —— in the county of ——, for the sum of —— dollars damages and costs, and demanded that the amount thereof be set off against the execution of the said within named plaintiff, and I have set off the same accordingly as by law I am required; and that after setting off the one of said executions against the other, there remained due to the said A— B —, the within named plaintiff the sum of —— dollars, which I have levied and collected as within I am commanded.

Dated this —— day of ——, A. D. 19—.

....., Constable.

[A return upon the other execution should be made, stating the facts of the delivery of the two executions, and the setting off of the whole amount thereof, etc.]

No. 187.

Return by Constable of Seizure of Fruits.

(Section 2074.)

By virtue of the within execution (or, attachment): I have this day levied upon — - bushels of peaches (or, blackberries, or, raspberries, or, strawberries, as the case may be), the property of the within named defendant.

Dated this —— day of ——, A. D. 19—.

.....,
Constable.

No. 188.

Order of Justice for Sale of Fruits Levied Upon.

(Section 2074.)

In Justice's Court:

H— O—
vs.
C— D—

Before ——, a justice of the peace of the county of ——:

To A— B—, One of the Constables of said County:

It appearing to me by your return on execution (or, attachment) issued by me in the above entitled cause, that you have this day levied upon, (describe the fruits as in the return) by virtue thereof; now, therefore, you are hereby authorized to sell the same at such time as you shall deem most beneficial to the said defendant, provided written or printed notices of such sale shall be posted up in three public places in the township where said property is sold, at least one day prior to the time of said sale.

Given under my hand this —— day of ——, A. D. 19—.

.....,
Justice of the Peace.

No. 189.

Notice of Sale of Fruits Under Justice's Order.

(Section 2074.)

In Justice's Court:

H— O—
vs.
C— D—

Before ——, a justice of the peace of the county of ——:

By virtue of an order, bearing date this —— day of ——, A. D. 19—, made by L— M—, the justice of the peace above named, to me directed and delivered I shall sell at public vendue, to the highest bidder, at ——, in the township of ——, in said county, on the —— day of ——, A. D. 19—, at —— o'clock in the —— noon, the following goods and chattels, to wit: (describe the fruits as in the justice's order).

Dated this —— day of ——, A. D. 19—.

.....,
Constable.

No. 190.

Return of Constable to a Criminal Warrant.

(Sections 2080-83.)

I have this day, in the county of ——, arrested the within named defendant, and have him before the court in custody; plaintiff notified on the —— day of ——, 19—.

Amount of my fees, $——.

Dated ——, 19—. .....
Constable.

No. 191.

Return to a Criminal Warrant Requiring the Summoning of Witnesses.

(Sections 2080-83.)

By virtue of the within warrant, to me directed and delivered, I have taken the within named C— D—, whom I have before the court in custody; plaintiff notified on the —— day of ——, 19—.

I further certify and return, that I have summoned A— L— and B— O— as witnesses to appear and testify, as I am also by said warrant commanded.

Amount of my fees, $——.

Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 192.

Return to a Criminal Warrant When Justice is Absent or Unable to Attend.

(Sections 2080-83.)

By virtue of the within warrant, to me directed and delivered, I have taken the within named C— D—, as within I am commanded. I further certify and return, that A— B—, the justice by whom the said warrant was issued, is absent from his office and from his place of residence; and I therefore have the body of the said C— D— before E— F—, one of the other justices of the peace of the county of ——, as by law I am required.

Amount of my fees, $——.

Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 193.

Return to a Warrant to Search for Stolen Goods.

(Section 2805.)

I hereby certify and return, that by virtue of the within warrant, I did on this —— day of ——, A. D. 19—, search the house (or, place) within described, for the goods therein specified, and that I found therein the following, to wit: (specify the goods found), and I now have the same before the justice within named, as I am within commanded.

Amount of my fees, $——.

Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 194.

Return to a Venire.

(Section 2089.)

I hereby certify and return that, by virtue of the within precept, I have personally summoned each of the several persons named therein, to appear as jurors at the time and place within mentioned.

Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 195.

Return to a Warrant for the Removal of a Nuisance.

(Section 2094.)

I hereby certify and return, that by virtue of the within warrant, I did on the —— day of ——, A. D. 19—, take with me sufficient assistance, and being accompanied by R— S— and T— P—, two of the members of the board of health of the township of ——, county of ——, did proceed to the place indicated within, and did then and there, under the direction of the said R— S— and T— P—, destroy (or, remove, or, prevent) the nuisance (or, source of filth, or, cause of sickness) therein mentioned, as within I am commanded.

Dated this —— day of ——, A. D. 19—.

.....,
Constable.

No. 196.

Return to a Warrant to Remove Infected Persons.

(Section 2095.)

I hereby certify and return, that on the —— day of ——, A. D. 19—, by virtue of the within warrant, I did, under the direction of the board of health of the township of ——, county of ——, remove the within named R— S— as I am within commanded.

Dated this —— day of ——, A. D. 19—.

.....,
Constable.

No. 197.

Notice of Sale of Unclaimed Property by Constable.

(Section 2105.)

PUBLIC SALE OF UNCLAIMED PROPERTY.

Notice is hereby given, that by virtue of an order made by H— R—, one of the justices of the peace of the township of ——, county of ——, bearing date the —— day of ——, A. D., 19—, I shall sell at public auction, at (describe the place) in said township, on the —— day of—— instant, or, next), all the goods and chattels referred to in said order, and described in the inventory annexed thereto as follows (describe the property as in the inventory).

Dated this —— day of ——, A. D. 19—.

.....,
Constable.

No. 198.

Return by Constable of Proceedings Under Justice's Order.

(Section 2105.)

I, the constable to whom the within order was delivered to be executed, do hereby certify and return as by said order required, that on the —— day of ——, A. D. 19—, I posted up notices of sale of which the annexed is a true copy, in three public places in the township of ——, that is to say: I posted one of said notices on

(describe each of the three places where the notices were posted up), and that at the time and place therein mentioned, to-wit, the —— day of ——, 19—, I offered the goods and chattels described in said several notices, at public auction, and did then and there sell the same for the sum of —— dollars, which was the highest price I could obtain therefor at such sale. And I do further certify and return that my fees for making said sale amount to the sum of —— dollars, and that after deducting the same, there now remains in my hands the sum of —— dollars, the product of said sale, which I have here ready to be delivered over to the justice who made the said order of sale, together with the inventory annexed to the said order.

Dated this —— day of ——, A. D. 19—.

....., Constable.

No. 199.

Return to a Warrant with Schedule of Stolen Property Secured.

(Section 2115.)

By virtue of the within warrant, to me directed and delivered, I have taken the within named C— D—, whom I have before the court in custody. And I further certify and return that I have taken of the property alleged in the within warrant to have been stolen, the articles mentioned in the annexed schedule.

Dated this —— day of ——, A. D. 19—.

....., Constable.

Schedule of property secured by me under the annexed warrant:
One gold watch,
Six silver teaspoons, etc.

....., Constable.

No. 200.

Notice by Constable of Sale of Stray Animals.

(Section 2118.)

Notice is hereby given, that at the request of J— S—, the finder of the stray animals hereinafter mentioned, I shall, on the —— day of —— next, at —— o'clock in the —— noon, at ——, in the township of ——, in the county of ——, sell at public auction, to the highest bidder therefor, the animals described as follows, to-wit: (describe the animals), which have been taken up and held as strays by the said J— S—.

Dated this —— day of ——, A. D. 19—.

....., Constable.

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